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MODERN

STATE TRIALS.

REVISED AND ILLUSTRATED

WITH ESSAYS AND NOTES.

BY

WILLIAM C. TOWNSEND, ESQ. M.A. Q.C.

RECORDER OF MACCLESFIELD.

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IN TWO VOLUMES.

VOL. I.

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INTRODUCTION.

THE present edition of Modern State Trials is meant to include those of the most general interest and importance that have occurred during the last thirty years. None are inserted in these volumes that have been previously comprised in any collection; but the Editor regrets the want of space which constrains him to omit several that were not uninstructive. In making a selection, he has endeavoured to present a faithful but abridged report of such legal proceedings as would be most likely to command the attention of all members of the community, and to be read by them with pleasure and profit. This appears to be the popular description of the term "State Trials" in which Mr. Emlyn and Mr. Hargrave acquiesced, or they would not have included convictions for witchcraft, and the prosecution of Elizabeth Canning for perjury, in their collection. Were the definition restricted to political offences merely, the work, however logically correct, would be wanting in spirit and variety. Against the trials of Frost, Oxford, and O'Brien for high treason, of the mayor of Bristol for neglect of duty, of the Glasgow Cotton-Spinners for conspiring to murder, in their determination to raise the rate of wages, and of O'Connell for conspiracy, no technical objection can be raised, as they immediately affect the State. But, for the propriety of inserting the rest under the same title, a just apology may be made. The trial of the Earl of Cardigan before the House of Peers, for shooting at Captain Harvey Tuckett in a duel, not only on account of its rarity as the first criminal proceeding under the statute, but from the rank of the accused,

has a claim to be comprehended. The same reason, enhanced by the extraordinary nature of the evidence, will account for the insertion of the trial of the titular Earl of Stirling in forging the pretended vouchers to his title and estates.

In the records of criminal jurisprudence there occur few proceedings of more deep and painful interest than the prosecution of Lord Cochrane for conspiracy to commit a fraud on the Stock Exchange. After an anxious and repeated investigation of all the documents and circumstances connected with this strange case, the Editor has arrived at a firm conviction that the jury ought not to have convicted that gallant nobleman, whose uncle made him his dupe, and who lost all chance of an acquittal by the two cases being blended together. Fortunate for his country, happy for the credulous hero himself, would it have been, had he never set foot on the Stock Exchange, — could he have said with General Foy, when taunted in the French Senate, and told to carry his foreign news to the Bourse, "I know nothing of the gambling of the Bourse; for my part, I speculate in nothing but *the rise of the national honour!*"

The two cases of murder, that of Lord William Russell by Courvoisier, and of Mr. Drummond by M'Naughton, involve topics of absorbing interest at the period of the occurrence, and of enduring interest to all time. In the one are involved the rights and duties, the privileges and immunities of counsel for prisoners; in the other, the fearful question of responsibility for crime — how far moral insanity alone may exonerate the sufferer from the consequences of his guilt; whether M'Naughton was not influenced by the same organic necessity which forces the cataract with rushing might from the precipice, or rather by that demoniacal possession which drove the herd furiously down the steep into the sea. If not a free agent, he certainly ought not to suffer; but the fact is one most difficult to determine.

The trial of Mr. Stuart for killing Sir Alexander Boswell in a duel, and of Mr. Moxon for blasphemy in publishing a

complete set of Shelley's works which retained some profane and wicked passages, though very different in subject, are inserted for the same reason, — a desire to embalm the very beautiful speeches of Mr. Cockburn, Lord Jeffrey, and the present Mr. Justice Talfourd. By persuasive argument and pathetic eloquence, they at once convinced the reason and charmed the heart. A still higher order of oratory must be conceded to the defence of Ambrose Williams, for libel on the Durham clergy, by Lord Brougham, one of the most vivid specimens extant, either in ancient or modern literature, of keen irony, bitter sarcasm, and vehement vituperation. "Hæc verberat, hæc lacerat, hæc, hæc cruentat oratio!"

The prosecution of the Wakefields for conspiracy, and the abduction of Miss Turner, forms a singular chapter in legal history; interesting not less to the student of human nature on account of its characters and incidents, than to the lawyer for those elaborate discussions on the Scottish law of marriage, and the right of the wife, even should there have been a legal marriage, to appear as a witness against the offending husband, which were argued with such profuse learning and ability. But for these *memorabilia*, and the knowledge that all the facts connected with so remarkable a conviction were to be inserted at length in the next collection of State Trials, the Editor would have preferred omitting this peculiar case, lest it should open wounds long since healed, and lacerate private feelings. His comments are strictly confined to the evidence actually adduced, but he has been informed that a far more favourable interpretation might have been given to the few circumstances which implicated the daughter of the late Dr. Davies, had witnesses been called on her behalf.

In setting forth, under a condensed form, this and the other most interesting trials of our time, it has been the object of the Editor to free the work from dry severity by introducing the "*loci lætiores*" of the advocates, the salient parts of cross-examination, those little passages of arms between the rival

combatants which diversified the arena, the painting of the forensic scene, the poetry of action of these legal dramas. He has sought to give the expressed spirit of eloquence and law, upon occasions which peculiarly called them forth, pruning what was redundant, rejecting superfluities, weeding out irrelevant matter, but omitting no incident or episode that an intelligent witness would have been disappointed at not hearing. It is necessary, even for purposes of instruction, that the reader's interest should be kept vividly awake; in order that a book may become profitable reading, there exists a condition precedent, in the language of the craft, that it should be so written as to be read.

In the extracts here given from some of the most celebrated speeches of modern days, the Editor has also had the great advantage of the last corrections of the speakers themselves, and has thus been enabled to preserve the *ipsissima verba*, by which minds were captivated and verdicts won; those treasures of oratory which would have gladdened the old age of Erskine could he have seen how his talisman had been passed from hand to hand, and the mantle of his inspiration caught. The vivid appeals of Whiteside, the magnificent defence of Cockburn, the persuasive imagery of Talfourd, will exist as *κτήματα ἐς ἀεἰ*, trophies of forensic eloquence, beacon lights it may be, in the midst of that prosaic mistiness which has begun to creep around our courts. In an age which abjures imagination, few figures are now prized save those of the counting-house!

What intelligent spectator can witness a single trial in courts of justice, without at once discerning the reason why our judges are held in such affectionate esteem; how it comes to pass, that, in the most heated times of faction, their names should be held sacred from attack, the subject of general homage? Presiding over the administration of the laws with that gentle firmness which petulance scarcely can provoke, a patient endurance that seems superior to fatigue, and a fulness of knowledge which ensures justice, they present

a firm impartiality that it would be affectation to praise. Not a breath of suspicion ever seems to stain the purity of the judicial mirror. The professional pride which every advocate must feel in the conviction of their worth is tinged, however, with a feeling of sadness as one model of judicial excellence after another so quickly passes away. Since this edition was commenced, the gentle wisdom of Tindal, that exemplar of magisterial perfection, has been extinguished; the most refined of critics and logicians, Jeffrey, has been lost to the Scottish courts; and even now, with reluctance and regret, the common-law bar have been compelled to part with their high-minded chief justice. But the name of Denman will live wherever Justice has a fane, or Freedom a worshipper, or Humanity a friend. Nor will his profession or his country ever forget the memorable pleadings for an uncrowned queen which illustrated the advocate, or that noble resistance to the tyrannical usurpation of the House of Commons which stamped the judge emphatically as

"Justum ac tenacem propositi virum."

unshaken by threats of broken privilege and the speaker's warrant.

Suitors are daily benefiting by the several legislative reforms which he accomplished; and twice the eighteen years that his commanding presence ennobled the Court of Queen's Bench must impair all images of the past, ere the look, voice, and bearing of the great magistrate who executed justice and maintained truth, can be forgotten.

If the wish of heathen idolatry may be transposed to a Christian hope, we should again cite from the same favourite bard, and say of such a spirit, "*Serus in cœlum redeas.*"

The essays, chiefly historical, prefixed to the several trials, have been introduced in order to familiarise the reader with the subject, and prevent the monotony which, but for these occasional dissertations, might pervade so many recurring trials. The notes are added with a similar object. The

consideration of several interesting subjects of jurisprudence, on the advantages or disadvantages of grand juries, of requiring unanimous verdicts, of capital punishments, and of abolishing private secret appeals to the Home Secretary, might have been appropriately introduced, but the space would not permit. Should leisure and opportunity allow, these and kindred subjects of criminal jurisprudence will be discussed in a separate publication.

Temple, March 12. 1850.

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austere. The technicalities and bald language of Sir Bartholomew Shower appear still more unfavourable to those who have read the legal arguments and impassioned addresses of Sir F. Pollock and Sir Fitzroy Kelly. There occurs now no unseemly wrangling with the Bar, no caustic and misplaced reviling of a prisoner — such an incident would be deemed too strange for fiction — no "hard words or hanging," the last only on occasions of rare necessity, for there is no judge like Page. Whether in reference to the profound ability of the venerable magistrates who presided — one is still happily preserved to grace and dignify and inform the profession — or to the acuteness and eloquence of the counsel who prosecuted and defended — to the clear arrangement of proofs — to the arguments on points of law, or to the equable attention of the jury, who, in their anxiety for the truth, never betrayed, during an investigation of eight days, impatience or weariness; the lawyer, who rejoices in the honour of the gown, may point with proud satisfaction to the trial of John Frost under the special commission at Monmouth, which distinguished the close of 1839 and the first week of 1840. Rarely has there occurred a more grave case for solemn judicial inquiry. It scarcely seemed credible, at a time of profound peace, when work was abundant and wages high and provisions plentiful, that thousands of workmen, chiefly miners, should have been assembled on the hills above Newport on a Sunday night in November, according to previous concert, many of them armed with guns and pikes, to make a midnight attack on a peaceable town. It sounded more like a romance than a chapter of domestic history; and resembled rather the irruption of Indian savages upon the wigwams of some unoffending settlers than the assemblage of fellow-countrymen. But for the tempestuousness of the night, which delayed the meeting of the three separate bands, commanded by Frost, Zachariah Williams, and Jones the watchmaker of Pontypool, who had undertaken to collect 10,000 men, the inhabitants of Newport would have been surprised in their sleep, and been exposed to the fury and excesses of an undisciplined multitude. The largest portion of these lawless marauders, under the guidance of Frost, arrived in the suburbs between eight and nine

on Monday morning, Nov. 4, 5000 in number, and attacked the little inn, in which a small detachment of the Queen's troops, under Lieutenant Grey, thirty in all, were drawn up. Taught by the disasters of Bristol, the troops entered into no parleying, no waving of caps, no shaking of hands with the mob. Thrusts with pikes and firing on the one side, volleys of fire-arms at the word of command on the other, brought the conflict between lawful authority and rabble rule to a crisis at once. In ten minutes all was over. By the discipline of a mere handful of soldiers, judiciously posted and well-commanded, the blind fury of thousands of brave men was forthwith subdued, and they fled in a wild panic. But the punishment of these giddy rioters was severe. Not less than thirty are computed to have perished. Many of the slain were carried off, and twelve bodies were left at the threshold of the inn. Slain for what object? The poor, ignorant, misguided working-classes could not themselves tell. They had been marched, without any definite design, to gratify the turbulent fancies and factious vanity of Frost and his brother Chartists, to show their physical strength, and commence a rebellion for that high-sounding term the Charter, of the precise meaning of which they had no clear conception. Some vague, dim notion of improving their state, coercing property and getting money without work, and the reliance upon empty promises at trades-unions and lodge-meetings, in the absence of real grievances, seem to have urged them on. Frost had been recently dismissed from the local magistracy, into which he should never have been obtruded, for seditious speeches delivered, after warning, in a spirit of bravado, and sought to make the people his instruments, as Jack Straw and Bell and Cade had done before. The conviction of the three Chartist leaders, and the submission of the rest, checked the mutinous spirit that was abroad, and this volcanic shock of democracy ceased as suddenly as it had been upheaved, disturbing peace and social order. Twice again, at no remote intervals, in 1842 and 1848, the Chartist disaffection sprung up, indestructible and elastic as before, leaving the political problem yet unsolved, by what method, and with what potent charms, this restless craving for anarchy may be set at rest.

INTRODUCTION

TO

THE TRIAL OF FROST.

It was the peculiar felicity of Queen Anne, a happiness communicated to none of her predecessors, that during her reign of twelve years no traitor suffered death. Our present sovereign has held the sceptre with as gentle hand for a still longer period, and, first of the House of Brunswick, has been blest with the same good fortune. The clemency which softens the councils of Queen Victoria deserves the more especial comment, as the attainted assailants of her throne have been more criminal and daring than those who threatened the supremacy of the Stuart. Not the comparatively venial crime of putting down meeting-houses, which, by the dangerous doctrine of constructive treason, converted the footman Dammaree, unconscious of his elevation, into a traitor, or the corresponding with France in silly, unintelligible cypher, which would have made Hall a martyr had his life been taken, but the sudden attack of a quiet country-town by thousands of mutinous workmen, and the attempt to wrest an integral part of the kingdom from her sway, have compelled special commissions and prosecutions for high treason. Marked, indeed, is the contrast between these remote and modern state trials. The humanising influence of a century's civilisation has not been poured in vain upon our courts, every part of which, whether we regard the judges, counsel, or jurors, seems radiant with justice in mercy.

We are wiser than our forefathers, for we are more humane, and the judgments of the Bench command universal assent, since who can doubt its anxiety to be just? In comparison with the calm intelligence and serene urbanity of C. J. Tindal, even the demeanour of Holt, with his sharp "Sirrah" to the prisoner, and "Look ye, Sirs," to counsel, looks harsh and

austere. The technicalities and bald language of Sir Bartholomew Shower appear still more unfavourable to those who have read the legal arguments and impassioned addresses of Sir F. Pollock and Sir Fitzroy Kelly. There occurs now no unseemly wrangling with the Bar, no caustic and misplaced reviling of a prisoner — such an incident would be deemed too strange for fiction — no "hard words or hanging," the last only on occasions of rare necessity, for there is no judge like Page. Whether in reference to the profound ability of the venerable magistrates who presided — one is still happily preserved to grace and dignify and inform the profession — or to the acuteness and eloquence of the counsel who prosecuted and defended — to the clear arrangement of proofs — to the arguments on points of law, or to the equable attention of the jury, who, in their anxiety for the truth, never betrayed, during an investigation of eight days, impatience or weariness; the lawyer, who rejoices in the honour of the gown, may point with proud satisfaction to the trial of John Frost under the special commission at Monmouth, which distinguished the close of 1839 and the first week of 1840. Rarely has there occurred a more grave case for solemn judicial inquiry. It scarcely seemed credible, at a time of profound peace, when work was abundant and wages high and provisions plentiful, that thousands of workmen, chiefly miners, should have been assembled on the hills above Newport on a Sunday night in November, according to previous concert, many of them armed with guns and pikes, to make a midnight attack on a peaceable town. It sounded more like a romance than a chapter of domestic history; and resembled rather the irruption of Indian savages upon the wigwams of some unoffending settlers than the assemblage of fellow-countrymen. But for the tempestuousness of the night, which delayed the meeting of the three separate bands, commanded by Frost, Zachariah Williams, and Jones the watchmaker of Pontypool, who had undertaken to collect 10,000 men, the inhabitants of Newport would have been surprised in their sleep, and been exposed to the fury and excesses of an undisciplined multitude. The largest portion of these lawless marauders, under the guidance of Frost, arrived in the suburbs between eight and nine

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The only real spells are to be found in the religious and moral improvement of the labouring classes—in purifying their dwellings, in elevating their self-respect, and furnishing supplies to their mental and physical wants. The inequalities of the rich have at length compelled attention to the comforts of the poor, and may, with prompt and humane care, avert the miseries of an agrarian or servile tumult, and revive the good old simple lesson to "Fear God, honour the King." This trial also must have furnished an excellent text, on which to strengthen their minds and soften their hearts. It was a noble spectacle to witness the calm grave stillness which pervaded the Court, its gentle patience and dignified repose, in striking contrast to the fierce passions that raged without the walls. Detachments of troops were then scouring the hills, as a fresh rising of the masses had been apprehended; yet day by day the steadfast course of justice pursued its even path with all the appearance and reality of perfect unruffled security. The master-spirit, who had caused such irreparable mischief, stood at the bar for his deliverance, and knew that he should not suffer from the general excitement. His crime was rather softened than exaggerated in the temperate speeches of counsel for the prosecution, and he met with a courteous forbearance from the Court, which he could not himself have shown. A stranger would not have surmised his guilt from the manner in which his name was mentioned, and the courtesy with which he was addressed. Monsieur Cottu alone, who had studied our criminal proceedings, might have guessed the grave nature of the accusation from this very absence of reproach and contumely. But the full, disimpassioned, and impartial consideration given to his case, the complete conviction impressed into the minds of all that justice had been done in mercy, wrought a salutary and perceptible effect on the lower orders. The most unruly bowed their heads in subjection to the supremacy of the law, so well vindicated to their understandings and commended to their feelings, and that portion of the kingdom has since been at peace.

STATE TRIALS.

THE TRIAL

OF

JOHN FROST,

FOR HIGH TREASON,

UNDER A SPECIAL COMMISSION, HELD AT MONMOUTH,

In December, 1839, and January, 1840.

Judges: C. J. *Tindal*, Rt. Hon. B. *Parke*, and Mr. J. *Williams.*

Counsel for the Crown: The Attorney-General, Sir J. *Campbell*, Solicitor-General, Sir Thomas *Wilde*, Serjeant *Ludlow*, Serjeant *Talfourd*, Mr. *Wightman*, the Hon. J. C. *Talbot.*

Counsel for the Prisoner: Sir Frederick *Pollock*, Mr. *Kelly.*
Assistant Counsel: Mr. *Thomas.*

On the 10th of December, 1839, Chief Justice Tindal, in his charge to the grand jury, gave a clear, calm, and most able exposition of the law of treason, and explained the cause of its being the highest crime that could affect society. "Gentlemen, the crime of High Treason, in its own direct consequences, is calculated to produce the most malignant effects upon the community at large; its direct and immediate tendency is the putting down the authority of the law, the shaking and subverting the foundation of all government, the loosening and dissolving the bands and cement, by which society

is held together, the general confusion of property, the involving a whole people in bloodshed and mutual destruction; and, accordingly, the crime of High Treason has always been regarded by the law of this country as the offence of all others of the deepest dye, and as calling for the severest measure of punishment. But in the very same proportion as it is dangerous to the community, and fearful to the offender from the weight of punishment which is attached to it, has it been thought necessary by the wisdom of our ancestors to define and limit this law within certain express boundaries, in order that, on the one hand, no guilty person might escape the punishment due to his transgression by an affected ignorance of the law; and, on the other, that no innocent man might be entangled or brought unawares within the reach of its severity by reason of the law's uncertainty."

The statute 25 Edward 3. declares, in its concise emphatic language, that it is treason if a man do levy war against our Lord the King in his realm, and thereof be provably attainted of open deed by people of his condition. The Chief Justice explained that, "an assembly of men, armed and arrayed in a warlike manner, with any treasonable purpose, is a levying of war, although no blow be struck; and the enlisting and drilling and marching bodies of men are sufficient overt acts of that treason, without coming to a battle or action. And, if this be the case, the actual conflict between such a body and the Queen's forces must, beyond all doubt, amount to a levying of war against the Queen, under the statute of Edward. It was quite unnecessary to constitute the guilt of Treason that the tumultuous multitude should be accompanied with the pomp and pageantry of war, or with military array. Insurrection and rebellion are more humble in their first infancy; but all such external marks of pomp will not fail to be added with the first gleam of success. The treasonable design once established by the proper evidence, the man who instigated, incited, procured, or persuaded others to commit the act, though not present in person at the commission of it, is equally a traitor, to all intents and purposes, as the man by whose hand the act of treason is committed. He who leads the armed multitude towards the point of attack,

and then retires before the blow is struck—he who remains at home, planning and directing the proceedings, but leaving the actual execution of such plans to more daring hands—he who, after treason has been committed, knowingly harbours or conceals the traitor from the punishment due to him, all these are equally guilty in the eye of the law of the crime of High Treason."

With the kindly feelings that should ever characterise the addresses of a Christian judge, this consummate lawyer, and amiable man, concluded his lucid explanation of the law with an expression of the sincere regret and pity that he felt on the occasion of these disastrous occurrences. "I would add, also, my most earnest hope that it may be found in the result that the great majority of those who may have been involved in the guilt of these transactions have been misled by the arts of wicked and designing men, and have sinned thus through ignorance and blindness rather than from premeditated guilt; and I can suggest no remedy which can be applied successfully to counteract a state of mind and feeling so unhealthy and diseased, and infecting so large a portion of the community, except the diffusion amongst them of the benefits of religious instruction, and of a sound religious education amongst the rising generation, so that as the younger part of the community advance to manhood they may feel the conviction of the wholesome truth, that they are bound to yield obedience to the laws of their country, not from the terror only which the law inspires, but from a much higher and more binding motive, the fear of the Almighty, and from the thorough belief that 'the powers which be are ordained of God.'"

On the following day the Grand Jury returned true bills for High Treason against John Frost and thirteen of his followers, and the Special Assize was adjourned for their trial to the 31st of December.

Mr. Maule delivered to each of the prisoners, on the 12th of December, a copy of the caption and of the indictment for High Treason, and a list of the jurors returned by the sheriff; and on the 17th of the same month, a list of the

witnesses to be examined on their trial for proving the said indictment.

On the 26th of December, at the request of the prisoner John Frost, Sir Frederick Pollock and Mr. Kelly were assigned as his counsel.

The Court re-assembled at Monmouth, on the last day of the year, when the prisoners were set to the bar, and the indictment read at length. The first two counts were for levying war against Her Majesty in her realm; the third for compassing to depose the Queen from her royal state and dignity; and the fourth for compassing to levy war against the Queen, with intent to compel her to change her measures. The counsel for Frost then stated on his behalf, their intent to sever in their challenges, and all the prisoners, with the exception of Frost, were removed from the bar.

Upon the Clerk of Assize proceeding to call over the names of the jurors, beginning with George Adams, Sir Frederick Pollock at once objected, the order of names in the panel being apparently alphabetical, and not drawn by ballot. He suggested that the jury ought to be selected by ballot. The Attorney-General thought it a matter of most perfect indifference, "but from the seventh year of William the Third down to the present trial, I believe that this form of proceeding never has been adopted; the course has always been to begin with the name standing first at the top of the list." As the application was not positively opposed, the Court conceded to the objection, intimating an opinion that the course objected to was an advantage to the prisoner!

Abstractedly, this might be so; but the able counsel for the prisoner would not surrender an outwork. To prove their determination to fight *à l'outrance*, Sir F. Pollock, as if leading a forlorn hope, again objected to a peremptory challenge on the part of the Crown. With a startling temerity, he expressed his conviction that the Court would not be surprised at his objection. "I am aware that for a long series of years it has been considered to be the practice, and therefore to some extent the law, that the Crown might postpone the cause to be assigned until the panel is gone through. With the utmost deference to your Lordships, I conceive

that this practice crept in at a time when there was a deference paid to the Crown upon points of this description, which the law and the principles of the constitution did not warrant." This attack on established authority was valorously followed up by Mr. Kelly, who took a supplementary objection that the challenge was not till after the book had been put into the hands of the juror, which was too late. This technical point *inter apices juris*, what was the moment of beginning to administer an oath, was then formally discussed, and the fact left to the officer of the court to say whether he had authorized the party to take the book, or had directed him in any manner to put his hand upon it. As Mr. Bellamy could not recollect, the Court would not interfere, but intimated that the moment the oath is delivered by the officer, or begun to be delivered by the officer, it is too late for either party to challenge. The principal objection was repelled with some severity, as its hardihood deserved. "As to the former objection, which is a question of law, we really are called upon, after a construction has been put upon this act of Parliament from the very period when it was passed in the 33rd of Edw. I. down to the present time, to put a construction different from that which prevailed at the time the statute was enacted, and different from that which all our predecessors have put. Where would be the certainty of the law of England; what safety would there be for prisoners, as well as for the public execution of justice, if judges, acting according to their own discretion, neglecting those rules of interpretation, which wise men before them have laid down, and which have been sanctioned by time, were to do that for the first time, which we are now called upon to do, namely to put a construction different from that which has been put by all who have gone before us?"

These formal discussions and challenges had consumed the day; and it was not till evening that the jury were charged with the prisoner in the usual form, and that Chief Justice Tindal addressed to them the not agreeable information — "the purposes of public justice require that you should be kept separate and distinct from your families and your friends until this trial is over; but all due pains have been taken to

render your abode, whilst you are kept here, as comfortable as possible. The sheriff has taken every possible pains in his power." Access for the prisoner for his counsel and attorney till ten at night and after nine in the morning was then accorded, Mr. Kelly suggesting, that very lengthened communications might take place between the prisoner and his attorney, or his counsel. So ended the first day's trial and the old year. When the Court had re-assembled on the 1st of January, 1840, and Mr. Talbot had opened the indictment, upon the Attorney-General preparing to launch his case, Sir F. Pollock again interposed.

"I feel myself bound, at the earliest moment (and this is the first opportunity that I have had), to take an objection, which must occur the moment that my learned friend puts a witness into the box, that we have never had a list of the witnesses, pursuant to the statute, and, therefore, that no one witness can be called."

Even the forbearance of the Attorney-General could not brook the renewed interruption. "The solemnity of a court of justice must be observed. There must be some regularity; and I humbly apprehend, that I am now on the part of the Crown to state, under your Lordship's sanction, the facts." The Court declined to interpose without his consent, and the Attorney-General opened his case.

"In the discharge of my official duty, I have the honour to attend you to conduct this important prosecution; and I hope you will believe that my only object is, that the facts of the case may be fairly laid before you; that truth may be fully investigated; that innocence may be vindicated, if innocence exists; and that you should only pronounce a verdict of guilty upon clear and convincing evidence. Gentlemen, it is highly important that parties accused should be zealously and ably defended; but it is also of importance that the law should be vindicated, that the peace of society should be preserved, and that, where crimes have been committed, the criminal should be brought to punishment.

"Gentlemen, I think that no one will deny the necessity of the solemn inquiry in which we are engaged. There has recently been in this county an armed insurrection; the law

has been set at defiance; there has been an attempt to take forcible possession of the town of Newport; there has been a conflict between the insurgents and the Queen's troops; there has been bloodshed; the loss of many lives. The intelligence of these outrages has caused alarm and dismay throughout the kingdom."

Sir John Campbell then explained the statute of Edward, and recognised the distinction between public war and private commotion.

"Wherever there is private revenge only to be gratified, or a private grievance to be redressed, or a private object to be attained, although force may be used, and although this may be an offence against the law, it does not amount to the crime of treason. But where you have an armed force setting the law at defiance for a general object, that is an offence comprehended by this Act of Parliament."

After citing copiously from Hale and Foster, the Attorney-General proceeded to give a geographical description of the county in which the disturbances had taken place. It was the Hill district, of a triangular form, having for its apex Risca, a place about five miles from Newport, intersected by deep glens, watered by mountain streams.

"Gentlemen, in that country, as you are aware, there are rich mines of coal and iron. These, of late years, have been worked to a very great extent; and those mountains and valleys, which, fifty years ago, were almost uninhabited, having only a few shepherds' huts scattered up and down, are now the seat of a dense population, estimated, I think, at above 40,000, who are employed in working the mines, and in supplying the wants of the workmen. Gentlemen, I am afraid that this population, which has suddenly sprung up, is, in many instances, not of the most peaceable description. I am afraid, Gentlemen, that ignorance prevails there to an extent very much to be deplored, and that many of the persons who live in this district are subject to be practised upon by designing men. It would appear that this population has been organised by the establishment of affiliated societies, so that, upon any occasion, a command might be

issued and circulated among the population, and speedily obeyed.

"Gentlemen, it will appear that the prisoner John Frost, who had been for many years a linendraper in the town of Newport, had very extensive influence in this part of the country — I mean in the Hill district, in Monmouthshire. Newport, you are well aware, is the place from which the coal and the iron obtained in those mines is exported; it is a considerable town, and very great importance must be attached to it. It is the highway from South Wales to Bristol, to Gloucester, to Birmingham, and to the north of England."

The Attorney-General then gave an unexaggerated, unimpassioned narrative of the facts that he should prove, but avoided detailing particular declarations made by Frost, as these would depend upon the evidence of persons who were more or less concerned with him in that insurrection.

"It gives me," he concluded, "the most sincere satisfaction to find that he is defended by gentlemen of the first eminence and the first talents at the bar of England. Every thing that zeal, every thing that learning, every thing that eloquence can accomplish, will be brought forward in his cause. So that the result of this trial, whatever it may be, must be satisfactory to the public justice of the country. I own, Gentlemen, that it seems to me that my learned friends, upon the proof of these facts, must have a very difficult task to perform. I think they will hardly deny the law of High Treason, as it is laid down by Mr. Justice Foster and Lord Tenterden. Well, then, Gentlemen, here there was, according to the evidence that will be laid before you, an armed insurrection, very formidable in numbers, with *a public purpose.* There was actually a conflict with the Queen's troops — not accidentally — not on any sudden affray — but with premeditation and design. Will my learned friends then say, that there was some private object which the prisoner sought to obtain. Gentlemen, what that was, I am wholly at a loss to conjecture. I hear nothing of any private revenge; I hear nothing of any private grievance; this was not a meeting for discussion; it was not a meeting for petitioning the Queen

or either House of Parliament; it was not a meeting arising out of any dispute between masters and servants in the coal trade or in the iron trade; it was not any sudden outbreak from want of employment, or from want of food; for I believe, if inquiry is made, it will turn out that the coal and iron trade had seldom been more prosperous; that employment was easily obtained; that wages were high; and that those who were engaged in this insurrection had no pretended private grievance that they wished to redress. Then, Gentlemen, what is the conclusion to be drawn? That the witnesses whom I call before you speak the truth — that there was this public object, by armed force to change the law and constitution of the country.

"Gentlemen, unless the offence is clearly and satisfactorily made out, no question it will be your duty to acquit the prisoner, and you will have satisfaction in doing so. But if the case should be clearly and satisfactorily established, you will act a manly part, you will not shrink from your duty, whatever may be the consequences. Gentlemen, it imports us all, in whatever situation of life we may be, that the law should be respected and obeyed. Whether landed proprietors, or farmers, or merchants, or tradesmen, or labourers, whatever our position, in any situation of life, high or humble, it equally imports us all that such efforts should be effectually suppressed; it equally imports us all, for the sake of example, that punishment should follow crime."

Immediately on the Attorney-General sitting down, and the calling of the first witness, Sir Frederick Pollock renewed his objection. "Now, my Lord, I object that we have had no list of witnesses in which the name of Samuel Simmons appears, delivered in pursuance of the Act of Parliament; and I call upon my learned friend, therefore, to show that a list has been delivered, in pursuance to the Act, containing the name of the witness now proposed to be examined."

Mr. Attorney-General. We will do that.

The Attorney-General proceeded to show that a list of witnesses had been duly delivered, without prejudice to his insisting that the objection came too late. It was proved by

Mr. Maule, that he delivered a copy of the indictment, with a list of the jury, to the prisoner, on Thursday, December 12th, and on the 17th a list of the witnesses. The copy of the indictment and jury list were delivered at the earliest possible moment, to oblige the prisoner; the Act of Parliament, 7th Anne, c. 21. s. 11., requiring that "when any person is indicted for high treason, or misprision of treason, a list of the witnesses that shall be produced on the trial for proving the said indictment, and of the jury, mentioning the names, profession, and place of abode of the said witnesses and jurors, be also given, *at the same time* that the copy of the indictment is delivered to the party indicted."

The prisoner's counsel proceeded to argue the question at great length, and with marked ability. "The Act 7 Anne, c. 12. s. 11. was express that after a period named in the Act, long since passed, the list should be delivered simultaneously. The trial of Lord George Gordon was the first occasion, when the statute of Anne, previously in abeyance during the lifetime of the Pretender, became practically the law of the land." To an unlucky phrase of Mr. Justice Foster, when commenting on this statute, that it will be considered as one of those which merit a liberal construction, Sir F. Pollock administered a just rebuke. "My Lords, I take it that that must mean a liberal construction in favour of the prisoner, and I do not imagine that my learned friends will seek to deprive the prisoner of the benefit that the statute has conferred upon him, by asking for a liberal construction in favour of the Crown, and against the prisoner. But, my Lords, permit me, as an humble member of the profession, to which I have for many years belonged, to say, that if there be any one phrase that I deprecate, for all purposes, it is that of 'a liberal construction' of any statute. I know the use that can be made, not indeed in modern times, but the use that has been made, of what is called 'a liberal construction.' And, my Lords, I believe I may say that this had the perfect approbation of the late Lord Tenterden, when, arguing before him, I took the liberty of saying, as I do now before your Lordships, that we ought not to hear of 'strict construction' or of 'liberal con-

struction,' but that the only thing we have to look for is the 'true construction,' be that what it may. The mistake might have originated in a feeling of indulgence to the prisoner, by giving thus prematurely a copy of the indictment, and the text-books were calculated to mislead; still, the prisoner had a right to insist on the strict letter of the Act. It may be said, 'If you deliver a list more than ten days before the trial, you have satisfied the spirit of the Act;' but, my Lords, let us look at the letter; at all events, in an important case like this, we must look at the letter; we must see what are the enactments; and I must object here, as I did to the doctrine of liberal construction, to talking about the spirit of an Act of Parliament. Let us look at what are its clear and manifest enactments, and then let us obey them, and we may rely upon it, that the best mode of enforcing by example obedience to the law, is to take care to obey its enactments in the seat of justice itself. The practice was in accordance with the enactment. In the trial of Hardy occurs this passage: 'On Monday, October the 13th, Mr. White, solicitor for the Treasury, delivered to each of the prisoners a copy of the indictment, a list of the jurors impanneled by the sheriff, and a list of the witnesses to be produced by the crown for proving the said indictment.'

"There was wisdom and humanity in requiring that the documents should be delivered together, that the prisoner might know to what indictment the list applied, as history furnishes instances of the same individual being under a charge of high treason upon five different indictments. Be this as it may, I am not bound to make out the policy of these provisions. I have a right to stand upon this, that it is the law, and the prisoner is entitled to it, be the reason, the policy, and the object of the legislature whatever they may have been. Had he been assigned counsel, and been present at the time when the copy of the indictment and the list of the jurors had been delivered, and with Mr. Frost, a few days after looking over the indictment and considering the panel of jurors, when the officer of the crown came with his two or three witnesses to deliver a list of the witnesses, he would have said, 'Put that list in the fire; that is the

advice I give you; I give it with fearlessness; your blood be upon my head if I am wrong.' I should have said to him, 'Read the statute, it is plain enough; he that runs may read it. The list is to be delivered *with* a copy of the indictment, and not some days after. You are to have the means of putting the whole at once into the hands of the man who is to advise you; there is to be no chance of one paper missing and getting into one person's hands, and another paper getting into another person's hands; they are bound up and incorporated by the Act of the legislature; you are to have them all together. If the list of witnesses is delivered at any other time, or under any other circumstances than the other documents; if the list is delivered at a different time; or if the witnesses who attest the delivery of the list of the jury do not also attest the delivery of the list of witnesses, if the forms of the statute be not complied with, you are under no obligation to pay attention to such a list. You may treat it as beside the law, or as contrary to law, as not coming within the discharge of that duty which the law has cast upon those who prosecute for offences of this great magnitude.'

"Is the objection taken too late? When could the prisoner have taken advantage of it before. Not upon his arraignment, the first subsequent period that he is brought before the Court. The single question is,—'Are you guilty of this high treason, or not guilty?' I believe the ceremony of asking how you will be tried is omitted under the modern Act. Then, after the arraignment, the next step is for the prisoner or his counsel, if counsel have been assigned, to challenge the jurymen as they appear. Is that, my Lords, a stage of the proceeding in which he is bound to communicate to the Court, that there is some vice in the delivery of the list of witnesses, of which he intends to avail himself. Surely, my Lords, I should think not."

"When and how," said Mr. Kelly, "were the lists of the witnesses to be delivered? The Act says, not within so many days, but at the same time as the copy of the indictment is delivered. No inference was permitted to creep in, that a copy of the indictment might be delivered without the list.

The language of the statute was plain, and the practice had been invariably according to the terms of the statute. The greatest possible prejudice might arise to the prisoner unless there were a literal compliance with the statute. There might be preferred two or three separate indictments for high treason against the same prisoner. He could not know to which indictment the possible testimony of the witnesses in the list delivered to him, referred. He should know with absolute certainty that the whole of the documents referred to the same subject-matter. The moment their Lordships were induced to relax from the strictest construction of the words of the Act, the door was open to a number of enquiries exceedingly inconvenient." As to the objection being taken too late, Mr. Kelly called on the Attorney-General to say where is the provision of the statute that required the prisoner at any time, till about to be confronted with the witnesses, to make his objection that the statute had not been complied with. "There was no difference in principle between an objection to one witness and an objection to all the witnesses. The law has provided, in its benevolence for me the prisoner, that no witness shall be called to give evidence against me, whose name and address I have not had notified to me at the same time that I received a copy of the indictment upon which I was to be tried; and this objection is good, whether it applies to one or one hundred names, unless there be something in the statute to warrant a departure from the express terms of it." Mr. Kelly then cited a number of precedents to show that the Court ought not to entertain the question, whether or not the prisoner might be prejudiced, whether or not they had an equivalent, whether or not the law had been substantially complied with, but must take for their guide the very words, aye, and the very letters of the statute. The moment they embarked upon a sea of speculation as to what should be an equivalent, as to what one Attorney-General or another Attorney-General might call a substantial compliance with the Act, that moment there was introduced diversity of conflicting decisions, and the prisoner was placed at the mercy or the ingenuity of an Attorney-General. The statute that was created as a protection and safeguard to the

prisoner, would become a snare to entrap and even to slay them, if it were thus frittered away.

These arguments, though pushed to an extreme, outweighed the subtle and refined reply of Sir J. Campbell, who insisted that the real meaning of the legislature had been fully and amply complied with. He sneered at the unfounded nature of the complaint, which really was, that a copy of the indictment had been served too soon: that if its delivery had been deferred five days no objection could possibly have been made. If well founded, it had been waived. After plea pleaded, and after the jury had been charged with the prisoner, no objection could be made to the manner in which the list was served. No extrinsic objection could be permitted, as it had been waived by the future steps taken and acquiesced in. The delivery of the list was, however, perfectly good. The statute of Anne required this list, the copy of the indictment, and the list of the jurors to be served ten days before trial. Sir Robert Peel's Act left the list of witnesses on the same footing, but required the two other documents to be served ten days before arraignment. Thus the legislature severed the simultaneous manner in which the service was to take place; arraignment being one thing, and trial another. The Attorney-General, in his simplicity, found great difficulty in understanding a very plain phrase, what the term "at the same time," meant. The documents need not be on the same piece of paper, or necessarily tacked together.

"I suppose that first a copy of the indictment may be served; and I suppose that a few minutes after the party who serves that, remaining in the room, may serve a copy of the list of the jurors, and that a few minutes after he may serve a list of the witnesses. My Lord, if that might be done at an interval of five minutes, I presume it might be done at an interval of a quarter of an hour, or at an interval of an hour or of a day. What is the rule? I have been frequently asked. My Lord, I have no difficulty in saying that this is the rule, that it shall be ten clear days before the party is put upon his trial; and that he has the same advantage, he has the advantage that the legislature intended he should have, if he is served with a copy of each of those documents, so as to enable

him to be prepared to object to the indictment, to challenge the jurors, or to object to the witnesses.

"One object of the statute of Anne was, to take away the distinction which then existed as to the lapse of time that there might be between the service of the copy of the indictment, the service of the list of the jurors, and the service of the list of the witnesses, and the day of trial. It was with respect to that to be 'at the same time' with regard to all the three; the same time was given for each act, namely, ten days. The time for the service of the copy of the indictment was extended from five days to ten days; the time for the service of the list of jurors was extended from two days to ten days; and, with regard to the list of witnesses, which was now to be given for the first time, the same time was to be allotted to that; it was to be at the same time that those services were to take place. It was never intended to insist as a condition, that all those three services should be *uno flatu;* never meant that the service of the papers should be made *semel et simul.*"

The Attorney-General was proceeding in his astute attempt to explain away the plain words of the Act of Parliament, when he was stopped by Chief Justice Tindal.

"We have a sufficient degree of doubt upon this point to reserve it as a point for further consideration. We are not prepared to say that the objection which has been made by the learned counsel on the part of the prisoner is valid; but it involves a question, upon which no direct decision has taken place, and which calls for very serious consideration. It is the more important, as the same objection may apply itself, under existing circumstances, to several other cases in which indictments for the same offence have been found, and the other prisoners arraigned. We propose to take a course on the present occasion which will prevent the possibility of an over-hasty decision operating, on the one hand, to the prejudice or disadvantage of the prisoner, and, on the other, from causing a failure of public justice. We shall allow the trial to proceed, and shall take the opinion of Her Majesty's Judges on the validity of the objection, supposing such pro-

ceeding should eventually become necessary by the verdict of the jury."

The next morning Sir Frederick Pollock made an ineffectual but chivalrous attempt to procure an acquittal for his client, should the majority of the Court decide in favour of his objection. Baron Parke and Mr. J. Williams did, in effect, give their judgment against Chief Justice Tindal, in his favour: and as the fifteen judges formed no court, in strictness the prisoner would have escaped, had their judgment been pronounced at the time. This anticipated anomaly of the one judge ruling his two colleagues, gave rise to the following dialogue.

Sir F. Pollock. Will your Lordship permit me to mention, in the presence of the Attorney-General—your Lordships reserved the point which was argued last night for further consideration. I presume, my Lord, the effect of that would be to place Mr. Frost in precisely the same situation as if it had been decided in his favour.

Mr. Attorney-General. It must be, my Lord, the same as in all other cases.

Lord Chief Justice Tindal. It is a very common course to take at assizes, when a point arises which suggests a difficulty to the judges.

Sir F. Pollock. Your Lordships cannot suppose that I am making any objection to that course. I am merely asking this, and the Attorney-General himself being here makes it a matter very easy to be arranged, that in the event of your Lordships being of opinion that the objection ought to have prevailed at the trial, Mr. Frost may be placed in the same situation as if it had prevailed.

Lord Chief Justice Tindal. No doubt about that; he will be in the same situation as if we had decided it at the time. If, upon consideration and consultation with the judges, we think the objection ought to have prevailed, it will be as if it had prevailed at the moment.

Sir F. Pollock. And the verdict will be accordingly.

Lord Chief Justice Tindal. No.

Mr. Attorney-General. Mr. Frost, my Lord, will be in the same situation as all the rest of Her Majesty's subjects

under similar circumstances. This case does not differ from any other.

Mr. Serjeant Ludlow. There is nothing new in this case, Sir Frederick Pollock.

Sir F. Pollock. My learned friend, Mr. Serjeant Ludlow, says there is nothing new in this case; I dare say there is not. But why that observation should be addressed to me, and not to the Court, I cannot understand. I have difficulties enough to struggle with in performing this overwhelming duty, as far as my own feelings are concerned, without having to meet such observations as those; and I would request my learned friend not to suppose I come uninstructed in points of law; I am aware of that which he states. My attention was first called, in professional life, to the case of a person named Walsh, convicted of defrauding another party. It was decided, that he ought to have been acquitted; and yet he remained under attainder for the rest of his life.

Lord Chief Justice Tindal. I do not know anything about that case; I have explained the position in which the prisoner will stand if this point should be decided by the judges in his favour. It will be precisely the same as if we had now so decided it.

Sir F. Pollock. If that is understood, my Lord, I have no further observation to make.

Mr. Attorney-General. It is understood that the state of things will be precisely the same in this case as in all other cases, where the learned judges reserve a point for the consideration of their learned brethren assembled at Westminster. There is no special course to be adopted here.

Mr. Baron Parke. Not at all. If there is a conviction, and the judges are of opinion that the objection is well founded, a pardon will be issued at the recommendation of the Secretary of State, as a matter of course.

Sir F. Pollock. With all deference, my Lord, that is not placing the subject in the same situation.

Mr. Baron Parke. That is the only course that could be pursued; because you can find no instance, in a criminal case, of a judge reserving a point for the consideration of all the judges, in the same way as a judge does at *Nisi Prius.*

Sir F. Pollock. I thought, my Lord, that in this case the presence of the Attorney-General representing the Crown might make a difference. I am aware that cannot be done at the assizes: but with all deference to the Court and my learned friend, Mr. Serjeant Ludlow, it did appear to me that the presence of the Attorney-General here, representing the Crown, and consenting that the verdict should be entered for the defendant if this point were decided in his favour, would make a difference.

Mr. Attorney-General. My Lord, in this case the law must take its course. At present your Lordship overrules the objection, subject to the consideration that it may undergo by your Lordships, assisted by your learned brethren at Westminster.

Mr. Justice Williams. With precisely the same consequences that follow in other cases of the same kind.

The first witness, Samuel Simmons, was not permitted to give his evidence without a long examination on the *voir dire*, and lengthened argument. The statute of Anne required that the list of witnesses should contain the names, professions, *and places of abode* of the witnesses. Simmons was described as being of the parish of St. Woollos, in the borough of Newport. It appeared that the parish of St. Woollos extended some distance beyond Newport; and the prisoner's counsel contended, that the witness could not be heard, there being a misdescription and an insufficient description. No fair information was given to the prisoner of the place of abode of the witness. Some more specific information should have been given, as, for instance, living by the side of a tram road, near the Salutation Inn. The prisoner had only ten days to enquire respecting 317 jurors and 236 witnesses; and some more precise *indicia* should have been given to assist an enquirer. The Court, however, without calling upon the Attorney-General, repelled the objection, the description being true in every part and particular, and sufficiently definite. The panel of the jury merely contained the name of the town or parish where their abode was, without any particular street or number. This somewhat technical objection prevailed, however, to exclude the testimony of two very important

witnesses, Serjeant Daly and Morgan James. The first was described as serjeant in Her Majesty's 45th regiment of foot, abiding at the barracks at Pillgwenlly, in the parish of St. Woollos, in the borough of Newport. These barracks at Newport proved to be in another parish, and Chief Justice Tindal held that this over-particularity might mislead.

A like advantage was taken of the prosecutor's extreme anxiety to give the fullest information in James's case. He was described as of Pillgwenlly, in the parish of St. Woollos, in the borough of Newport, collier, sometimes abiding in the house of his son John James, in the parish of Beddwelty, in the county of Monmouth, collier. He had lived eleven years in the same house; and, if the case had rested on the first part of the description, it would have been sufficient. But his son's house was put down in the wrong parish; and, as the prisoner might possibly be misled to expend time by looking after the witness where he could not find him, the Court determined not to receive his testimony. With such steadfast hand was the broad shield of the law held up before the prisoner, that no weak place might be exposed. The narrative of the witnesses for the Crown was scrutinised with equal vigilance, and no facts admitted that could by possibility be considered unfair, or be introduced for the sake of prejudice.

"I went," said Simmons, "in the same direction with Mr. Frost and the people. They came down Stowe Hill, on the west side of the inn, and turned to the right, the front of the inn. They went round to the yard, on the other side of the inn. There are two bow-windows to the house. The gates were shut. The men attempted to get into the yard, and could not; and Frost said, 'Turn round, and show your appearance to the front.' I was close by Mr. Frost when he said so. When that expression was used, the people turned round to the Westgate. They went to the front; they rushed in at the door: the door was opened when they went to it. The next thing I heard was firing; it began by the door from the persons who went up by the Westgate door. There was a great deal of firing; you could hardly see the Westgate for the smoke between the soldiers and the mob. The soldiers were in the

Westgate Inn. When there was a great deal of firing, the mob threw down their arms and ran away—a great quantity. I did not see the firing come from the soldiers. I suppose there were five or six thousand men there that morning. I saw two men fall. I remained till the mob was quite dispersed. The mob was dispersed in about a quarter of an hour. When I first saw the men at the machine, the boys were hurrahing. I saw Mr. Frost raise his hand like this [*lifting up his hand*], as if to prevent the boys from making a noise."

The cross-examination turned on immaterial matter.

The next witness, an attorney, Richard Waters, continues the narrative of what took place at the inn. "I saw Frost immediately before the Westgate Hotel, about nine o'clock in the morning. He was alone on the pavement, but accompanied by an immense body of men in the road. He was close by the house. He had a sort of loose wrapper about his neck. I heard a firing. I cannot say where Mr. Frost was at the time. I saw him almost instantaneously at the time of the firing. I stayed in the room at the inn as long as I thought it safe. I went out into the passage, and the only door which I thought I could get out by I found blockaded by the men. It was the back-door. I then went up stairs. The noise and din of breaking in the windows of the commercial room was so great, that I cannot say I distinctly heard any firing. The persons I had seen were breaking in the windows with pikes and mandrils, a kind of pickaxe, and various sorts of weapons. I quitted the commercial room after those persons had begun breaking in. I went up stairs, and remained there during the whole of the firing, I should say six or seven minutes. When I got up stairs there were some hundred volleys fired. When the firing ceased I came down stairs. I saw several persons in the passage, dead or dying: there were three dead persons, and one dying outside the door. When I came out the persons were dispersed; not entirely so, for they were hanging on the corners of the streets."

Two boys, Rees and Coles, were then called, who spoke to what took place at the Court-y-Bella machine, a short

distance from the end of the town of Newport. The boy Coles gave this account: —

"I know Mr. Frost; I saw him just abreast of the machine, rather above the machine. I saw Jack the Fifer there; he had a pistol in one hand, and something in the other. Frost had a red cravat round his neck. He asked me where the soldiers were that were in town. I told him that I was told there were ten or a dozen in the Westgate, and the rest in the Union. One man came up and said, 'We want the Westgate.' Another man came up and said, 'I want a waistcoat.' I heard Jack the Fifer say, 'March!' I did not hear Frost say any thing. They marched four abreast; the men made me go with them."

Thomas Bevan Oliver spoke to the attack on the Inn, with these additional particulars: "The first one who came up had a gun. The others had pikes, but they did not march up in order. I heard the man with the gun address the special constables at the door: he said, 'Surrender yourselves our prisoners.' I heard some one in the passage answer, 'No, never.' Upon that the man with the gun levelled it at my head. I caught hold of the door, and it turned the gun on one side. It went off about three inches from my head, and it stunned me."

It was suggested for the defence, that the demand might have been, "Surrender up our prisoners," and that the mob intended merely to rescue Vincent. To insinuate this warily, Mr. Kelly addressed the following adroit cross-examination: —

How long after was it that the mob had assembled before the door that the question was asked about prisoners, which you have stated? — I do not know that a minute elapsed.

Was it not one of the first things said or done? — It was; that was after they had been hurrahing.

When they came to the front of the house, where there was an open door, was not that one of the first things said or done by any of that body of men? — It was.

Was there a good deal of noise and confusion at that time outside? You yourself, I understood you to say, were quite in the front? — I was.

I do not mean to throw the least reflection upon you; but

were you not considerably alarmed at the time, from your position, and seeing the persons before you?—I was alarmed; I cannot say considerably.

I presume you will not undertake to swear positively to the precise words used by the person who said what you have mentioned concerning the prisoners?—Those I believe to have been the words.

I have no doubt you do, or you would not have sworn it. I only ask you, whether, considering the noise that prevailed at the time, and your situation, and the alarm, be it small or great, that you felt, you can undertake to swear positively to the words, or do you only believe that that was the substance and effect?—There may be perhaps a single word; but I am sure I cannot say. I believe them to have been the words that were said.

Did you observe whether they were addressed to any particular person? You have stated some body or other, gave an answer?—Yes, they were addressed to me. The man was about a yard from me, and he seemed to address himself to me, being on the outside, nearest to him.

May they not have been addressed to the whole that were then assembled?—Oh yes.

You can perhaps tell me whether you know a person of the name of Vincent?—Yes, not personally.

Do you know that he has been in confinement here since the last summer assizes?—Yes; I was at his trial.

I believe he was what is called a Chartist.—Yes.

Were there others tried at the same time of the same description of persons?—Yes.

And they were also convicted and imprisoned?—Yes.

You have lived in Newport yourself?—I have.

Do you know whether it was matter of public notoriety in Newport that great complaints were made by the Chartists concerning the way in which Vincent and the others were supposed to be treated in prison?—I do not know.

I am not asking you whether they were so treated, but whether you know that any complaints were ever made?—No.

You are not at all aware that it was matter of notoriety that such complaints and discontent had existed?—No.

Then Daniel Evans, a tailor at Newport, was called. "As

the men were going up the steps of the inn, I heard one person say, 'In, my men!' or, 'In, my boys!' I had heard no firing before that. I saw them tearing the lower windows to pieces, and some persons jump in after they had broken them. After that I heard firing in the passage, at the time the persons were breaking the windows. I know the room where the soldiers were. I stood at my own door. The firing commenced from the mob on the front door. That was before the window shutters were opened. I saw a firing into the room where the soldiers were. They were opening the shutters of the room when the firing into it began. The moment the soldiers began to fire, I thought it time for me to go. I went in doors, up stairs, to my top window; until the shutters were opened, the soldiers could not see the mob so as to fire at them. My upper window commanded a view of the Westgate; and I saw the first man fall near the corner. Another was shot when going into the steps. Others were shot. The moment the mob saw the first man fall, they all dispersed in all directions."

William Adams, keeper to Sir Charles Morgan, at Tredegar Park, spoke to Frost's retreat from the scene of action. "There is a lodge gate on the high road from Newport to Cardiff. I was standing by that gate on Monday, the 4th of November. It was very near ten o'clock in the morning. I saw Mr. Frost returning through the park. The lodge gate is about two miles and three quarters from Newport. At that time I saw from two to three hundred people running and walking from Newport. I spoke to some of them, from whom I could get no answer. A person came up, whom I now know to be Mr. Frost. He had a handkerchief in his hand up to his face. I thought he was crying. He came up in a strong walk. I did not know him then. I said, 'What is the matter at Newport, that the people are all running away?' He took his handkerchief from his face, and I knew it was Frost. He gave me some answer, but I did not understand what he said. He then went on in the same pace he had come to me. He went on towards Cardiff. I turned my horse to look after him. He kept the road for about 200 yards, and then went through a gate into a field. There was no public path there. There was a coppice wood behind

the park wall. I saw him go through an arch that leads into the coppice wood. There I lost sight of him."

Sir Thomas Phillips, the gallant mayor of Newport, gave a clear detail of what had occurred. "In the course of Sunday, the 3d of November, I had taken steps to preserve the public peace. I had ordered the superintendent of the police to have special constables ready. I had received intelligence of a movement in the hill country directed upon Newport. The special constables were ordered to be stationed at the different inns in the course of the evening. I stationed myself at the Westgate Inn with Mr. Brewer. It was not the place where the magistrates usually met. We remained there through the night. We received intelligence of the approach of persons towards Newport. I sent out one Walker, a special constable, for that purpose. He came back wounded about eleven o'clock at night. I sent persons to the marshes at the north of the town. Persons were brought back in custody. More than a dozen persons were brought before us and detained in custody. The greater part were sent to the barracks; but some remained in the Westgate. I received intelligence of persons approaching the town until shortly before nine o'clock. I sent a message for the troops from the barracks very soon after daybreak. I believe there were about thirty came under the command of Lieutenant Gray, who first formed the troops outside of the house. I then went out, and requested that he would march them into the yard, through the large folding gates. The gates are in front of the street. I returned through the house, and went into the court-yard, and met the military coming into the yard. They were formed again in the yard; and I directed the doors to be closed behind them, which was done. I then took Lieutenant Gray into the room at the east end of the house, and told him that they should be stationed there if he approved of it. They were stationed in this room. I ordered the special constables to come in, and the front door to be closed, which was done. The door was afterwards opened, and two or three special constables were put in charge of the door. I then went into a room over the commercial room, as I learnt the

body of men was coming down Stowe Hill. I could from that see a body of men passing the wing of the house, and formed in column. They were formed regularly abreast of each other. All that I noticed were armed, some with guns, some with long spears or pikes. I then ran hastily down to the passage below. I stayed to observe the appearance of the body; but, as I got to the bar, I saw the men at the head of the column entering the door. They carried the spears in their hands upright. I then went into the room where the soldiers were, and gave them an order to load. Whilst the men were loading, I heard several shots fired in the passage in the house. I also heard the windows of the room in which the soldiers were, beaten against on the outside. The lower part of the shutters was closed. The windows were pushed against violently, and the glass was broken. All the lower part of the shutters had been closed before the soldiers had been stationed there. The beating against the windows continued. I heard the report of fire-arms on the outside; and Lieutenant Gray advanced to the shutter on the front, which he opened. I advanced to the shutter on my left, which I opened. I turned round. I found my hand numbed, and that I had been wounded in my right arm. I looked down, and saw two holes in my trowsers. I was wounded in the hip twice. The wound in my arm was by a slug; that in my hip was by a ball. I had been wounded before the soldiers fired. I was wounded in the act of opening the window-shutter. The soldiers fired. I do not know of more than one dead body in the passage. He fell close at my feet. I think the firing did not continue quite ten minutes. I mentioned to Lieutenant Gray that I was wounded. I cannot say whether I told him so before the firing of the soldiers commenced. None of the special constables were armed with guns to my knowledge. I do not think they had anything but the common staves of their office of constables. I believe the peace of the town was soon afterwards restored. I was obliged to give up the charge of it. I did not leave the room until the fray was over. Mr. Hopkins has succeeded me as mayor. He was with me the whole of the night, giving directions to the special constables. It was an extremely wet night; the wind very

high. The wound in my arm was a bad wound. The wound in my hip was only a flesh wound."

He was cross-examined cautiously upon bye matters, as if to divert attention from the weighty parts of his narrative, by Mr. Kelly.

"I am an attorney, and have been in partnership with Mr. Prothero from 1824 until the close of 1839. I have known Mr. Frost for seventeen or eighteen years. I was well acquainted with him before the time of the Reform Bill. There was no personal intercourse between us whatever. I had very little acquaintance with him. There had been differences between Mr. Prothero and Mr. Frost. In 1824 there had been two indictments against Mr. Frost for libels. After that I know of no difference between them. I have met Mr. Frost in public, at public meetings. I have had opportunities of observing his public conduct about the time of the Reform Bill. There was a great deal of excitement at Newport, and public meetings, which I have attended, about that time. I have seen Mr. Frost there. He has taken a very prominent part there. I have not taken a very prominent part myself. I have spoken at two or three public meetings. I never said that the thirty-seven lords who were the majority against the Reform Bill deserved to be guillotined. I never said any thing approaching to it. I attended a public meeting at Usk, at which the high sheriff presided. I believe I made some observations respecting that majority. I cannot tell what they were. According to my recollection I censured the majority, but in no offensive terms. I believe I did not say any thing about meeting with their deserts. I have frequently differed from Mr. Frost in public; but I witnessed nothing in his conduct at those public meetings which appeared to me to be reprehensible. I think there was nothing in his conduct tending to riot or any thing of that sort. Mr. Frost was a magistrate for three years. During the whole of that time, I may have differed from his conduct as a magistrate on particular occasions, but I had not witnessed that he has done any thing which I thought he did not believe to be right."

Emboldened by this answer, Mr. Kelly ventured on a question from which he could not escape uninjured.

I have asked you hitherto concerning Mr. Frost's public character. I will now ask you, as long as you have known or heard any thing about him, has not his private character, as a private individual and member of a family, been perfectly good?—I should say not.

As a member of a family?—That I know nothing of.

It was concerning that I asked you.—I understood you to ask me respecting his character as a private individual. I took it in two branches. As a member of a family I know nothing of him whatever.

I ask you as to his character in the relations of private life with his family?—I know nothing whatever of his relations in private life with his family. I have seen Vincent. I was present at his trial. The prosecution was intrusted by Her Majesty's Government to the local magistracy of Newport. I, as mayor, was one of the persons who conducted it. I do not know that the subject of complaint of Vincent's treatment has been discussed by the magistrates. I attended a public meeting in the spring, which was produced by the meeting of the chartists, for the purpose of preparing an address to her Majesty that we might be allowed to enrol ourselves and support the government.

Captain Basil Gray, though differing in some important particulars from the mayor, gave a clear, succinct, and straightforward narrative—a soldier's history—of his part in the transaction. "I am a captain in the army, and on the 4th of November last was a lieutenant in the 45th. One company was stationed in the Union poor house. There was no other military at Newport. The company was commanded by Captain Stack. I was detached on the morning of the 4th of November with two serjeants and twenty-eight privates. I was ordered to report myself to the mayor. I marched immediately to the Westgate Inn, and reported myself to the mayor. I left about half-past eight. It took about eight minutes. On arriving at the Westgate I formed in front of the building, and consulted with the mayor. I was stationed in a room with a projecting bow having three windows. After I had made my preparation, the mayor came to me. At that time the guns of the soldiers were not charged. The lower shutters were closed.

I heard loud cheerings from the angle turning up Stowe Hill. It continued to the front of the building; and I could perceive certain weapons over the half shutters, spears and pikes. I saw they were forming in front of the building. They appeared to be forming very steadily, from the manner in which the weapons came up. They then discharged a volley of small arms at us, and rushed into the building through the front door, which had been left open. The volley tore the windows and window-shutters, by the effect of the slugs and balls. The men's guns were not loaded down to that time. I gave the word to load immediately, and they did load with ball cartridge. The lower part of the window-shutters were still closed and latched. They were then opened, one by the mayor and one by myself. I took the shutter on the left hand, the one nearest the hall. We were then exposed to their view; and another volley of small arms was discharged at us. Our men commenced firing from the windows when the shutters were opened. The lower sash had been lifted up before the shutters were closed, to allow us as much air as we could have. Our men then fired through the windows. The mob had entered the building. After we had fired half a minute the rush subsided. The door from the room to the passage was then opened. Those who had effected an entrance were armed. Our men fired into the passage. The body of one of the mob fell across the passage. The whole affair lasted less than ten minutes. The streets were soon cleared of all dangerous objects. The attack inside continued; and whenever the smoke cleared, the people endeavoured to force our position. But they always faltered when they found their own dead, and then they received our fire. The passage was cleared of all but the dead and wounded. I then directed the men to spare their ammunition. We began with twenty-two rounds, and they had fired about three upon the average. I perceived a great deal of ammunition taken from the pockets of those that were killed. It was afterwards used. One man had ball cartridge, well made up, thirty or forty rounds. There was a great deal of ammunition less skilfully made up; some slugs and balls. The slugs were loose in their pockets. We applied this ammunition afterwards; and then we used the

gunpowder, in part, in priming. There were two prisoners taken in the room, within about ten paces from us. Ammunition was taken from one of them. They had no arms. We found nine dead bodies."

The cool steadiness of the soldier, when exposed to the fire of the prisoner's counsel, Sir F. Pollock, was *naïvely* displayed in the following cross-examination:—

How long did you stay before you received the order to load?—I received no orders to load.

L. C. J. Tindal. What he said was, that he gave orders to load.

Sir F. Pollock. I understood Sir Thomas Phillips to say that he ordered them to load. Did Sir Thomas Phillips give you any orders to load?—I do not remember receiving any orders to load.

What did he give you orders to do?—We consulted together; and, as it was the expectation that the mob would attack us in the building, he was anxious that I should enter it. He offered me this room, which, on examination, I found capable of answering for the purpose very well, as it was on the ground floor, and as it communicated with the steps and with the house. I brought my men there. I did not load, because there was no immediate necessity. It is a point upon which I am the only judge.

You say you were about a minute in front of the building, and then ten minutes in the court-yard?—About ten minutes in the court-yard.

And then you went into the building, and went to this room, which you and Sir Thomas Phillips agreed was a fit position for you to occupy?—Yes.

You say you did not receive any orders to load; but you loaded because you thought the time was come, when it was necessary to do so?—I loaded when I was fired on. I required no orders to load. I had not time to look for instructions; and there was no necessity for it.

Were you fired on the moment the shutters were opened?—The moment the shutters were opened; that served to expose us, and we received a fresh volley.

Had you been fired on before?—We were fired on when the mob came in front of the building.

Before the shutters were opened? — Before the shutters were opened.

Did you give orders to load? — Yes.

The shutters were opened for the purpose of giving effect to your fire upon the mob? — To allow our men to fire. The shutters were about a foot higher than our men, and, unless the shutters were opened, the soldiers could not fire.

Unless they fired in the air? — Soldiers do not do that.

But many shots came in over the glass? — Yes, a great many.

Many of the shots were in the ceiling? — Many in the ceiling.

Then the practice of the mob was different from that of the military; and all the damage they did was to break the windows, and to make a hole in the ceiling? — And to tear the shutters, and to wound one of our party, and Sir Thomas Phillips.

That was not until after the shutters were opened? — No.

Do not mix matters together that I am endeavouring to keep separate. What I want to know distinctly is, whether you did not load for the purpose of firing before you opened the shutters? — I loaded for the purpose of firing before I opened the shutters.

You say you expended about three rounds of ball cartridge? — I averaged it at about three rounds per man.

How long were you in that room before the firing over the shutters into the ceiling commenced? — Something better than five minutes.

When re-examined he stated the important fact, — "The shutters were damaged and torn before I opened them. The marks were perfectly on a level with us; but we were protected by the shutters. I could perceive the marks in the shutters were on a level with us the moment they were opened. I believe the mob fired deliberately on us after they saw us unmasked; but we were prepared for them. I am satisfied the mob must have seen me at the time they fired; for the windows were down to the very floor, and I stood before them in my uniform, and the soldiers stood in a line behind me. They must have seen the soldiers. Only one

soldier received a wound after the shutters were thrown up. The mayor received his wound at the same time with Serjeant Daly."

One of the special constables Sir Thomas Phillips had sent out proved that he had gone on horseback to the hills, at ten o'clock on Sunday night, towards Risca, and seen a dozen men or more by the road side. "They were standing under a wall. It was dark. I could not see whether they had anything in their hands. I heard a cheering and a gun fired. The cheering seemed to come from a great many. When I heard this I returned. It was a very wet night, and very dark. On my way back, when I got to Risca, I saw some persons. It was about twelve o'clock at night. The men tried to stop me. They were in the road. I could not see whether they were armed; but I was stabbed, I could not tell with what. There was a pistol or a gun fired by some of those persons. It was a considerable wound from the stabbing. I went into Newport and reported to the mayor. My wound was extensive."

To prove previous concert and assemblies of rioters, some witnesses were then called who spoke of the gatherings near the hills and at the Welsh Oak. One Matthew Williams said: "I had gone to bed on Sunday evening about six o'clock, and betwixt that and seven there was a knock at the door. They said they wanted the men out of the house. My wife said, 'There are no men here.' They said, 'They knew better,' and struck the door in. Then I said, 'I am coming.' There was a person put over me to keep me from running away, to guard me. I took a stick with me. I went with a great number to Newbridge. Most of the men had some weapons or other. Spears the most of them had. I saw some guns. It was a very bad night, very bad. We went on to the Oak; and at the Oak we met Frost. There were several persons round the place with Frost. They had spears and guns. Some had sticks. We stayed at the Welsh Oak till almost daylight. We went on towards Newport and through Tredegar Park. I heard somebody cry out 'Fire!' twice or three times. I believe there was a captain over every ten. My captain was not there before we set off from the Welsh Oak.

I did not hear any person say where we were going. At Newbridge I heard nothing said, no further than that we were to go after Mr. Frost. I was told that we were to go to Newport by George Reed, at the lodge at Argoed, at about five o'clock on the Sunday evening. Most of those that belonged to the lodge went with us. At the time it was said we were to go to Newport. It was also said we were there to stop the coaches, and the post, and all traffic. We asked what we were going to do there besides? It was said that we were to stop there to guard the town. George Reed said we were to be sure to bring arms with us. Another man asked him, 'Did not we propose our meetings should be peaceable? Instead of that we are carrying arms; and we know that is against the law.' Reed said, 'If we do not break the old law, we shall never get a new one.'"

The cross-examination tended to confirm the truth of his story. "All that we were to do was to stop the coaches, and the post, and all traffic. I first agreed to give evidence for the Crown when I was examined by Mr. Edwards, the magistrate. I was on my bed at the time. Mr. Edwards asked me how I did. I said I was very bad. He said, 'Then you must tell me the truth how you came by this wound;' and I told him. He did not tell me if I told the truth I should get off. He told me I should be severely punished. I was afterwards carried to the magistrates and examined. It did not run in my head to be tried. At that time I was thinking more about dying."

James Hodge, the next witness, was a very important one, for he spoke to declarations alleged to have been made by the prisoner. "I remember Sunday, the 3d of November. On the evening of that day I was at the Coach and Horses at Blackwood, and Mr. Frost was there. It was about seven o'clock. There were a great many persons there. During the time that Mr. Frost and I were in the room, there was a man wearing a glazed hat. That man said he had come up from Newport, and that the soldiers were all Chartists, and their arms and ammunition were packed up, and that they were ready to come up, only for we to go down and fetch them. He asked if any person wanted ammunition. It was

said the soldiers were in the barracks. The man said, the people ought to be ready on the road with guns, to stop any person that might pass. He said, 'Come, brothers, it is time we were off; for our enemies are flying in all directions, and we ought to have been down these two hours.' The people afterwards assembled on the road. They were, some of them, doubting whether they would not go to scour the Blackwood. There was a stagnation, and Mr. Frost put himself at their head, and told them to follow him. Upon that the people turned about from the direction they were going, and followed him. There was a man wanted us to form three and three. He laid hold of me by the arm, and I told him to let me do as I liked. We then went in no particular form. Mr. Frost told them to follow him to the Cefn. He said he should there meet Zephaniah Williams with 5000 men, and Jones, of Pontypool, with 2000. We afterwards proceeded towards the Cefn, towards the Greyhound. The persons who followed Mr. Frost had some of them guns, some pikes, some sticks. Some were willing to go, some not. Those who were not willing were ordered to be kept up by the men who had arms. We arrived at the Welsh Oak; there we stopped. We afterwards arrived at a place called Pye Corner; there I saw the prisoner, Mr. Frost, again. The prisoner said the guns should take the front, the pikes next, the bludgeons next, and then the people without arms. I was within a few yards of Mr. Frost when he said that. On his giving those orders I went up to him, and asked him, 'In the name of God, what was he going to do? Was he going to attack any place or people?' He said he was going to attack Newport, and take it, and to blow up, or down (I am not sure which), the bridge, and to prevent the Welsh mail from proceeding to Birmingham; that there would be three delegates there to wait for the coach an hour and a half after the time; and if the mail did not arrive there, the attack was to commence at Birmingham, and from thence to the north of England and Scotland, and that was to be a signal for the whole nation. I told Mr. Frost he might as well lead us to a slaughter-house to be slaughtered; that he was like a butcher leading a flock of lambs; and I begged

of him to desire the men to return to the hills. He said to me, 'Do you think so?' and turned away with a scornful look, as I thought. This was at Pye Corner. It was after daybreak. At this time the road was lined with men further than I could express; some armed, some not. I jumped into the briars, and hid myself there; I got under the briars and nettles, and made my escape. I went home as fast as I could. I had endeavoured to escape before this. I was stopped at Risca, particularly by people placed to prevent people from going back: a great many, in different places, were forced on against their will. On the Sunday night, before we started, the password was given near the Coach and Horses. The words were—'Beans,' the word of challenge, and 'Well' was the answer. The persons whom we met who did not know those passwords were to be made prisoners."

Another of the crowd, George Lloyd, proved the force used to compel recruits, and the intent of the ringleaders. "Zephaniah Williams said, 'My dear Chartists, do not be afraid. We are bound to be at Newport by two o'clock.' Then we all started down. The people then said, 'Come on, my boys.' The men all whooped, and said they did not care for the soldiers, and they marched away. As we went along, there was a knocking of the doors open, and taking people out of bed. They took the people along with them when they were going to Newport. If they did not come, they began dragging them out. They were pushing me on, knocking me on the back with a stick. They said they would serve me out if I did not go along with them. At Abercarne, they threw me into the canal. I was trying to make my escape from them. I got out again. I found myself very cold, stiff, and wet, and I dropped on the road, and was taken into a house, and I stayed there till about half-past six in the morning; and, in going home, I met twenty or thirty men. They had weapons, pikes and so on, like the others. Those men took me back again by force on the road to Newport. I met them about half a mile from Abercarne. They took me back as far as Tredegar Park, and through the park nearer to Newport. We met the people coming back in all directions; some with hats and some without. We learnt

what had passed, and returned back." He said, on cross-examination, "I have heard Vincent's name mentioned many times. I have heard Williams say he was a prisoner at Monmouth. I have heard that Vincent had been there. The people there liked him very much. The people knew he was in gaol. I have heard them speak about him."

Thomas Saunders, a small farmer, gave clear evidence of the designs of Frost's second in command. "I live near the Welsh Oak. I was at home on Sunday night the 3d of November. I heard a noise on the tram-road. I was in bed. It was twelve o'clock at night. I heard the noise. I sat up and lay down again. I heard a man say 'Get up.' I went to the door. I went to the barn to hide myself. A number came to the barn. They were to shelter there for a time. I let them shelter there. Zephaniah Williams came to my house. He said to the men that were in my house drying themselves, 'Come, my good men, let us go;' and every one made himself ready as soon as he could, and off they started. Some had guns, and some had pikes. It was then between six and seven o'clock. The men had come between twelve and one. I cannot form a judgment of the number of them. After the men went out, Williams followed them. Williams came back, and asked me if he might dry himself. I asked him where he was going? He said, 'Why do you ask?' I said, 'Because some of the men who were with me have told me this morning that they were going to Monmouth to draw Vincent out of prison;' and he said, 'No; we do not attempt it: we are going to give a turn as far as Newport.' They all left my house about seven o'clock."

Two other witnesses were then called, Barnabas Brough and Thomas Watkins, who were travelling together from Newport to Pontypool, and took up another part of the transaction; that division of persons who were marching under the direction of William Jones, of Pontypool, by another road, a little to the eastward. "They left Newport at about nine, in a gig with a horse, and had travelled from Newport about five miles when they were stopped. After being dragged from place to place, they found themselves near Cefn, and at

the Welsh Oak. While there Mr. Frost came in; it was past six. He said 'Where is Mr. Brough?' I said 'Here,' and requested him to obtain my liberation from this situation. He seemed astonished to see me there, and asked me what brought me there. I told him the parties who had me in custody could best tell him. He told me he had a great respect for me, and, although he hated my politics, he had a great personal regard for me. He then stated that I was dismissed or discharged. I then appealed to him for my companion, and asked him if he was included in the liberation: and he said, 'Certainly.' We were both liberated upon that."

The power of Frost over the mob being thus proved, another witness, John Harford, spoke to his declarations. "The mob asked Mr. Frost, when we met him, whether they had not better return. Frost said, 'No, they had better not return.' The mob asked Mr. Frost what he intended to do. He said, 'First they should go to the new poor-house and take the soldiers and arms; then, he said, there was a storehouse, where there was plenty of powder; then they would blow up the bridge, that would stop the Welsh mail which did run to the north, and that would be tidings, and they would commence there in the north on Monday night, and he should be able to see two or three of his friends or enemies in Newport.'"

The effect of the evidence of the next class of witnesses, relating the proceedings of the third division of rioters headed by William Jones, may be shortly given. A number of armed men were assembled on Sunday night at a place called the Race-Course, about a mile from Pontypool, and marshalled by Jones. The witness, James Emery, heard him order the men out repeatedly; he told them to turn out and march to Newport. He told them they were expected by the people of Newport in three bodies; the pikes were to go first, the guns next, and the others with what weapons they could get. "I saw them form in the road; I saw the pikemen form themselves in ranks so many abreast; I saw the guns come out and stand behind the others. I ran away. I was obstructed by two men armed with pistols; they threatened to blow my brains out if I went back; but I did escape home to Pontypool."

"I knew," he said on cross-examination, "of Vincent's being

sent to prison immediately after it happened. I believe the Chartists took a great interest in his fate. Two or three other Chartists were convicted at the same time; they were all in prison with Vincent. I do recollect something of dissatisfaction about the mode of Vincent's treatment, and about a petition to be drawn up: I recollect people's minds being dissatisfied about it."

Another mutineer, John Parry, pressed reluctantly into the service on that dark and rainy night, spoke of William Jones's active interference in bringing up the men. "I thought to make my escape, and got behind a screen in the kitchen. Jones came in, and told me that if I did not come out he would blow my brains out. He drew his arm from my breast. I then went out and marched on with the rest towards Newport. I came on to a turnpike, about half a mile from Newport: it was then about ten o'clock. I remained by the turnpike gate about an hour. I made my escape from that place. It was said they were waiting for the men who were to come from Blackwood."

"As we were going along," said another of his party, "we met a collier coming from Newport. Jones came up to the hedge, and asked him where he had been. He said, 'At Newport, where there are three or four killed.' This was about ten o'clock. Jones said in answer, 'Then we are done.' I did not see Jones after. A great many of those people had arms: some pikes, some pistols, some hatchets."

A person of the name of Thomas Watts spoke to seeing from eight to ten thousand people running away. "From forty to fifty guns I saw upon that occasion."

The capture of Frost was then related by Thomas Jones Phillips, a solicitor at Newport, and clerk to the magistrates. "I did not return home till the morning of Monday the 4th, about half-past ten. I saw a dead body lying under the portico of the mayor's house. In the Westgate Inn there were nine bodies, some dead, some dying. There was a warrant granted against John Frost on that day, at about five o'clock; it was a search-warrant as well as a warrant to apprehend him. I went with the superintendent of police. Mr. Frost was not in his house. I afterwards proceeded to

the house of John Partridge, immediately afterwards, with another search-warrant, attended by a special constable: it was between seven and eight o'clock. I knocked at the door of Partridge's house. No notice was taken of the knock. I called out, 'Mr. Partridge.' I found the door fastened. Partridge said, 'I am gone to bed;' and I said, 'Get up and open the door, or I must force it open.' The door was not opened, and I forced it open; I heard the iron fall from the door. Immediately on opening the door, which opens into the room of the cottage, I saw Mr. Frost within two yards of the door, standing facing me. We told him he was our prisoner, and each laid one hand on his shoulder. Frost said, 'Very well, I will go with you directly.' I then searched Partridge's house. Frost appeared very much fatigued; he said he was very uncomfortable. He was conducted to the Westgate Inn under my arm, about a quarter of a mile. Walters was also conducted there. Neither Frost nor Walters were searched till we got to the Westgate Inn. On searching Frost, three pistols were found in his pockets, a powder-flask, and some balls; the balls, I believe, were loose in his pocket. On Walters were found four pistols, a powder-flask, some balls, and some lucifer matches. Frost's three pistols were all loaded: those are the pistols [producing them]."

On cross-examination he said: "I searched Frost's house for manuscript papers. I searched the room at the back of the house, where he kept all his papers. I found a great number of manuscript papers in Frost's handwriting — copies of correspondence; they were handed to me by one of his daughters. His family consisted of Mrs. Frost, five daughters, and two sons; one of them is abroad. The search was made about seven o'clock, before I apprehended Frost: the papers were on different shelves. I saw Mrs. Frost when I first went to the house; she made no difficulty about the papers, nor did his daughters. I have no reason to doubt that I had them all. Mr. Frost's house is in the High street; Frost's house and Partridge's cottage are nearly back to back, with gardens between. Frost has known me many years; he must have known my voice. Partridge is a printer, much employed by Frost. Going by the street, the distance of

Frost's house from Partridge's is about three or four hundred yards. I believe there is a communication between them behind. Coming from Tredegar Park, you will come to Frost's house first. When I was searching the manuscripts at Partridge's from the two files, Frost said, 'By what authority do you search?' I said, 'I shall not inform you.' Frost said, 'If you expect to find any of my manuscripts there, you will be quite mistaken.'"

With this evidence the Attorney-General closed his case on the part of the Crown. It being then six o'clock, Sir F. Pollock requested to know whether their lordships would call upon him to address them at that late hour. C. J. Tindal at once acquiesced in the implied request for an adjournment, exercising a milder and sounder discretion than Lord Ellenborough had displayed, when refusing to adjourn a trial at midnight. "We shall certainly," said the amiable judge, "not call upon you unless you wish it, and feel yourself equal to it; otherwise it may stand over till Monday."

On Monday morning Sir F. Pollock commenced his forcible and pathetic address, with expressing dissent from the Attorney-General's opinion that he would have a difficult task to perform.

"I would to God that I had as little difficulty in relieving Mr. Frost from every charge of criminality on that eventful and fatal day, as in answering the charge of high treason.

"Gentlemen, in the course of my address, I must entreat your indulgence. To me criminal business is extremely new —a charge of high treason altogether so. The business of this court, as opposed to that of the other, is accompanied by a feeling of interest and anxiety to me, so intense, painful, and almost overwhelming, that I have, on all occasions where I could with propriety, declined being a party to a criminal prosecution. But I am sure that my learned friend will cordially agree with me, that no loyal subject can be better employed than in disproving the existence of treason, and satisfying you, the gentlemen of the jury, and the public at large, that this is not a case of that complexion, whatever degree of criminality of another sort there may have been."

He had no complaint to make of the form of the proceedings

or the nature of the charge. "As far as the learned judges are concerned, so far from uttering one syllable or whisper of complaint, I do feel that the administration of justice was never rendered—I had almost said more amiable—certainly never more satisfactory. I have never known on any occasion, I have never read of any proceedings of this sort, that have been conducted with such unexampled patience and moderation on the part of those learned persons. And I do, for the prisoner at the bar, feel deeply indebted for that time for consideration which has always been given, that patience in hearing, that readiness to give every possible opportunity to hear the evidence while yet attention is unexhausted, and to afford the opportunity of considering it before any address should be made to you. And I may be allowed, Gentlemen, perhaps to say, that your ready acquiescence in every arrangement suggested at the bar, or adopted by the Court, your patient forbearance from uttering one single murmur of complaint at the great inconvenience that you must have experienced in being separated for so long a time from your families and kept away from home, demands, and I trust, Gentlemen, you will accept, my sincere and cordial thanks."

He could satisfy the jury that there was no evidence upon which the least reliance could be placed that this was a treasonable purpose, whatever criminality might belong to the meeting, the marching, the arming, the alarm, the terror, and the fatal consequences that had ensued—how criminal soever, however much to be deplored and lamented, the purpose was not a treasonable one. "In the relaxed discipline of society that has prevailed for some time past, a very different estimation is to be held of public meetings, ay, even of armed meetings, from that which might have been formed some twenty or thirty years ago. The object and the intention of the parties may justly receive, at the close of the year 1839, a construction far more favourable than, perhaps, could fairly have been conceded in earlier periods of the history of this country.

"Hundreds of thousands of men have been collected for the purpose of exhibiting their numbers, and showing their strength for purposes connected with a change of the system

of government. According to the strict law, the one or two hundred thousand persons who assembled, I think, at the White Conduit House a few years ago, and marched in military array, a certain number in each rank, and the ranks following each other like an armed force, who marched down to the office of the Home Secretary, and presented a petition complaining of grievances, and praying for alterations in the constitution, — according to the strict letter of the law, those men were guilty of high treason; but no public notice was taken of that whatever; no man was punished for it; and those one or two hundred thousand persons retired to their peaceful homes that night in the city of London, after alarming the metropolis with their army, unquestioned, unmolested. Again, at the period of the Reform Bill, persons assembled at Birmingham, who talked of marching to London, that the Legislature who opposed reform might be aware that there was this large body of men, formidable unarmed, and almost irresistible if armed. And if we pass for one moment, and take a glance at the sister kingdom, there familiarly we hear talk of a petition from five hundred thousand fighting men. And so far has the authority of the law been practically relaxed, so far has permission, if not actual encouragement, been afforded to such proceedings, that it would be most unjust to use the same measure that was formerly in use as to the motives of parties. * *

"There has been a crime committed in the assembling of those armed persons, and marching them as they were marched for any purpose. But the case, without those declarations which have been interspersed in the line of march, as a case of treason, is absolutely nothing. The demand at the Inn was not 'Surrender *yourselves* our prisoners;' and I have no doubt you have already anticipated me, that in all probability what was demanded, was the surrender of those prisoners, Chartists belonging to the body that had marched there. It is very singular, that, although this is so important a fact, only one person is called to prove the use of any words about prisoners. The expression of Mr. Frost, 'Turn round and show your appearance to the front,' indicates no treasonable purpose. There is no 'Turn round and take the inn.' There is no 'Turn

round and fire on the military.' I should have thought that if they meant to blow up the bridge, the military possession of the Westgate Inn was of small importance, if they were to attack Newport, to blow up the bridge, and to stop the mail from proceeding to Birmingham. The mail could not have been stopped; for a new mail starts from Bristol to Birmingham, not the same coach that has come from the Passage to Bristol, and not the same coach that has come from Newport to the Passage. How very absurd, how monstrous, that the non-arrival of the mail from Bristol to Birmingham should be the signal, at the end of an hour and a half, for a general revolt. Suppose the non-arrival of the Newport mail, by blowing up the bridge: let us see what the effect of that would be. That could not possibly prevent the passage of the mail from Bristol to Birmingham; so that when the three delegates marched out, as they expected them, watching for the non-arrival of the mail, in would come the mail at its regular time. For, depend upon it, the mail from Bristol to Birmingham does not wait for the Newport bag; if the Newport bag is not there, it must go by some other conveyance; all the north of England will not wait for its communications because the Newport bags have been stopped. The three delegates would march out there, and seeing the coach, I suppose, trot in, they would immediately march back again. They might as well have agreed with the three delegates, at the same hour of night, to look upon the same stars in the heavens, as to devise such a mode of communication as this. Nothing could be so absurd. Mr. Frost had communications with Bristol. He had a bill coming due on that very Monday, the 4th of November, at Bristol, at the banker's there, and had made provision for that bill on the Friday previously. There is no proof of any Chartists watching at Birmingham: the case is an entire blank in this respect.

"Another phrase has been misinterpreted. The saying 'That they were going to Newport' was perverted into the declaration 'That they were going to take Newport,' when they in fact said, 'They were going to take a turn to Newport.' This was their real, true, genuine object, to take a turn there to draw Vincent out of prison. This was the true character

of the whole proceeding. Vincent had been tried for sedition, but he was considered by the Chartists as a martyr to the cause that they espoused, and for that reason meetings were held, and it had been contemplated by the large body of ignorant men up among the hills, that such a scheme was possible. Mr. Frost deprecated the use of any such violence, even for a purpose not treasonable, but highly dangerous to the security of civil order. Mr. Frost advised them to march to Newport, or, I should say, not advised, but permitted so much of their scheme to take effect, that they might not, in desperation, take some course that would be fatal to the public peace. With intentions only peaceful, they were permitted to go to Newport, with the single purpose of 'showing their appearance' and their strength there, prior to their making another appeal to the magistrates, either in favour of Vincent having the term of his imprisonment altered, or the supposed character of his confinement changed to a system less rigorous and severe.

"That part of the case which deserves especial attention, the deliberate firing upon the Queen's troops — for it furnishes a much stronger argument of a treasonable intention, — may be explained away with equal truth and facility. When did the military arrive from the poor-house at the Westgate Inn, and what possible knowledge could Mr. Frost and the rest of them have had, that the military were there? and secondly, how did they conduct themselves when the shutters were removed, and the military were unmasked? I think I shall be able to satisfy you, beyond the possibility of doubt, that Mr. Frost did not, and could not, know that the military were there at all; that no person that marched up to the door had the slightest notion that there were military in the house; and that the moment the shutters were removed, and the military appeared, and a volley was fired, the street was instantly cleared, and the mob ran away; strongly confirming the notion with which I set out upon the defence in this case, that there was no object of real warfare; for that the instant an angry gun was fired, they threw away their arms, and all went away. Not one remained; they threw down their weapons, such as had them, and hundreds and thousands were

seen returning, with the greatest precipitation, to the homes that they had left either that morning or the day before.

"The soldiers had not been there a quarter of an hour: the two boys who spoke to Frost's knowledge of the fact contradicted each other, and were then working for Mr. Phelps, the assistant-solicitor of the Treasury: rather curious that no person can be found to give information against Mr. Frost, except some individual who stands in some kind of relation of that sort to the prosecution. Although it turns out to be true that there were some soldiers (not ten or twelve, but thirty), the boys at that time had no means of knowing it, and did not know it. The story they have told about the men separating at that point is the merest fiction, a fiction just as untrue as that there were three delegates in Birmingham waiting the non-arrival of the mail.

"Captain Gray gave as a reason for his conviction that the mob fired upon the soldiers after the soldiers were unmasked and seen: 'They must have seen me, and fired after, for Daly was wounded, and the mayor together.' Now, when was the mayor wounded? Fortunately, there was one witness, Sir Thomas Phillips, who upon this point could not be mistaken. It was a matter of personal feeling about which it was impossible he should make a mistake. 'I was in the act of opening the window-shutters, I saw no soldier fire before that time. I and the serjeant were wounded in the very act of opening the shutters; and the moment we opened the shutters the soldiers fired, and no fire was returned.' If there had been, it must have been fatal; for any shot going into that room, with thirty persons in it, by no possibility could have escaped doing some one a grievous injury. The moment the shutters were opened, the glass having been before thrown up for the sake of getting air, they fired immediately upon the mob, and the mob dispersed instantly: not a shot was returned into the room. It is impossible that a shot could have been returned without being fatal or highly dangerous to some one. It is clear that the instant the soldiers fired, the mob that instant threw down their weapons and took to flight, and no sort of resistance was offered after that.

"It is equally clear that there were some prisoners, Chartists,

taken in the morning, of whose confinement there Mr. Frost and other persons undoubtedly were apprised, and for whose liberation they were loudly vociferating at the moment when they first went up. We are not here to deny that persons assembled in large numbers, and marched, and that they were armed; but we assert that the very moment that the military appeared, and there was any prospect that what they were doing might be construed into treason, that instant they all dispersed; not a man remained; the town was cleared, and it was quiet in the space of a very few minutes.

"It was extremely important to consider the personal conduct of Mr. Frost about that time, and during the whole of that day. He had been one of the magistrates of the town of Newport; and, during every part of those struggles which terminated in the Reform Act (if, indeed, they may be said to have terminated), had been remarked for that care and concern for human life, that disposition to keep the peace, and to protect those from whom he politically differed, of which you have had a signal instance in his instantly releasing Mr. Brough and his companion Mr. Watkins, when they were detained on the night of Sunday, the 3d of November. He became a Chartist, and, in common with many others, he adopted the opinions that are supposed to belong to that body of men. I hardly know what is meant by a Chartist. One of the witnesses, on the present occasion, spoke of five articles; but what the five articles were did not transpire. But the little that one picks up from the intimations of the newspapers on the subject, would induce me to suppose that they ardently desire to establish universal suffrage, vote by ballot, annual parliaments, no property qualification, and, according to some statements, that they look forward to a better distribution of property."

The prisoner here interposed. "That is not the subject of the fifth article; the fifth point is, the payment of members of parliament. There was never any talk of a distribution of property other than that which exists."

Sir F. Pollock expressed his pleasure at hearing the explanation, and resumed.

"Gentlemen, with respect to the first four of these matters,

I for one do not agree in any respect with the Chartists: but, I believe, upon these subjects their opinions are entertained by many members of parliament of undoubted respectability and honour, and considerable talent.

"Vincent, their leader, was committed to prison at Monmouth for sedition; and Frost took a very active part in endeavouring to ameliorate his condition in gaol, which was considered by the Chartists as a personal grievance affecting them. Frost went to Newport, to make a demonstration in respect of Vincent, and from the effect of that demonstration he may learn, that 'they that sow the wind shall reap the whirlwind;' a piece of advice that might not be thrown away upon many persons in far higher stations than Mr. Frost has ever had the honour to fill. I pause not to give a character to the offence: I admit it to be a grave one. All I contend for is, that it was not treason, for it had no character and purpose connected with treason about it. Mr. Frost so little expected that any thing would occur in the town of Newport to lead to the lamentable consequences that ensued, that the moment that occurred which he and others had expressly forbidden, he retired from the spot overwhelmed with sorrow and regret, and, I trust, shame at what had occurred. He made no attempt to escape, still less to resist by means of the deadly weapons that he had about his person. In addition to these circumstances, I ask you, can you believe that Mr. Frost, who is supposed on the Friday preceding to have formed a scheme to throw the whole country into confusion, would have actually on that day made provision for the payment of a bill of his own that was coming due the following Monday; and on that very Monday, the 4th of November, on that important and eventful day, that bill was actually paid; and yet the expressions of taking and keeping Newport, blowing up the bridge, stopping the mails, eating up Newport, are ascribed to Mr. Frost and his companions, he having a wife, five daughters, and a son living with him in that very town upon which it is supposed he was making this hostile movement. I must appeal to your feelings as men, as fathers, and as husbands, can you believe that Mr. Frost on that day contemplated, in the town of Newport,

from which he had not removed those members of his family, to whom he was dearly attached, a scene of bloodshed and revolution."

Sir F. Pollock wound up his energetic address, of which these extracts form the most important topics, with much force and feeling.

"The Crown has not found among his papers one single line or syllable worthy of being laid before you, to prove either concert, or intention, or treason in any shape whatever. Gentlemen, under these circumstances, I again say, that I know of no public measure that would tend so much to the honour of the country, to the peace of the community, to the quieting of that alarm which this lamentable transaction has created, as a verdict of Not Guilty, if that verdict can be pronounced with truth. It is no question whether you can *safely* pronounce that verdict; the single question is, can you pronounce it with truth? If you can, it would be the largest measure of safety to the country. If you can assure Her Majesty's subjects, in all parts of her dominions here, that these thousands upon thousands did not meditate rebellion; that their object was to enforce some claims in behalf of a suffering brother Chartist; that the accidental circumstance of their finding persons, whom they were determined to rescue, at the spot where they had meant to make only a demonstration of strength, led to violence, and that the instant they found that lead to bloody resistance they fled with terror and dismay from a field that they never had intended to enter; such an assurance will be attended by the best results. I say, Gentlemen, that nothing could occur so much to reassure this county and the kingdom at large, as the verdict of Not Guilty, if you can truly pronounce it; and I believe there would be more safety in that verdict, if true, than if 10,000 troops were parading the different parts of this county, to enforce obedience to the law at the point of the sword. You would free the country from this deep stain and imputation that has been cast upon it; and I think, except as regards the misconduct of some few isolated individuals, I may call in aid the circumstance that these thousands and thousands of persons marched down upon Newport

with very little aggression, with very little violation of private right, with none of the appearances and the demands of a riotous and tumultuous meeting, marching down under the notion of levying war. When they came to the Westgate Inn, they dispersed at the first shot; and in returning to their homes, I do not find that it is suggested that any one of them committed a single act of aggression of any sort, or that any violation of the peace or security of any of Her Majesty's subjects occurred on that day, or has since occurred at all. Gentlemen, the rest of England would hardly believe the quiet, the peace, and the security in which the proceedings here at Monmouth have been conducted. Where there was the remotest suspicion of treason existing in the country, among persons to some extent armed, and capable of combining in large numbers, it was perfectly right that the high authorities of the law should be protected, and that the peace of this town, where justice is to be administered, should be secured by the unusual presence of soldiers for that purpose; but, as far as I can learn, their services have been altogether superfluous; and if I am right in the view that I take of that meeting and that marching, their attendance might have been dispensed with without any danger.

"Gentlemen, it is for you to ascertain what is the just and the reasonable conclusion to be arrived at after giving effect to all the circumstances that belong to the transaction, that preceded it, that accompanied it, that have followed it. If you think that the solution that I have offered is the true one, and I see, Gentlemen, no escape from it, then is the prisoner at the bar entitled to a verdict of acquittal: but if you should doubt that, if the matter rests in that uncertainty, which almost every part of this transaction more or less seems to rest in, then, according to the Attorney-General's statement, and which is the law, I am entitled to say that the presumption is in favour of Mr. Frost's innocence, and that that is to be removed only by certain and convincing evidence before you can find him guilty.

"Gentlemen, if I have not exhausted the subject, I have nearly exhausted myself, and I have merely to pray that, for the sake of the individual whose counsel I am, for whom, and

for those dearer to him than his own life is, I plead, you will give a calm and a patient consideration to all the circumstances in the case, and come to a just, and, where there is any doubt, to a merciful conclusion. I pray you to take into consideration all that belongs to the case on the part of the Crown, and to the evidence that will be offered on certain points (I admit not many) on the part of the prisoner: and may the God of truth and mercy lead you to a just conclusion!"

The evidence called for the prisoner was slight in quantity, and in character unimportant.

John Wilton, a lath maker, first spoke to a cluster of the mob, declaring they were come for their prisoners that were at the Westgate; that they were determined to have them before they went back.

One Gould, a constable, swore that Mr. Hopkins, the superintendent of police, asked them what was it they wanted. The answer given was, "We want our prisoners."

The contradictions of this witness, elicited by Serjeant Ludlow, were not unamusing.

"No pike had been levelled against the front of the house, or the windows, at the time the special constable reached forward?—No.

That you swear?—Yes. It was a piece of iron; I do not know that it was a pike.

No offence was offered?—No, only what was begun by the special constables.

The special constables, in fact, began the offence?—Yes.

The people who came up were very peaceable till the special constables began the offence?—Yes.

They made no noise?—They made no noise whatever, only asked for the prisoners.

Just in a quiet civil way?—A quiet civil way: "Be pleased to give us our prisoners;" or "We want our prisoners."

That they said in a low voice?—That is what they said in a quiet and low voice.

Just like one man asking a civil question of another?—A civil question.

A sort of whispering low voice?—No whispering at all.

A low, quiet tone of voice?—Just as low as you speak now.

Perhaps lower, as low as you speak?—Perhaps so.

In a quiet, peaceable manner?—Yes, as I thought.

Keeping their pikes, or whatever they were, at their shoulders?—I believe, to the best of my knowledge, that the stick rested on the ground.

And the point up in the air?—Yes.

Nothing was done to show any offensive demonstration on the part of the mob?—Not the least.

Then this offence that was given by the man who reached out his arm behind you, was the first thing you saw to create any disturbance?—No.

What was the first thing?—A sort of groan.

That was before the constable reached out his hand for the pike?—Before.

A groan from the inside of the house?—From the inside, near to the front door."

How few perjured witnesses seem aware of the mischief they inflict on their own friends by over-acting their part.

A copy of a letter from Frost to one of the visiting magistrates of the gaol at Monmouth was then read by the permission of the Attorney-General, who did not wish any evidence to be excluded that the prisoner thought material. It was addressed to the Rev. James Coles, and dated the 28th of September, 1839:—

"Sir, I beg leave respectfully to solicit that, as a magistrate for the county of Monmouth, you will be pleased to make some alteration in the severe regulations of the gaol to which Mr. Vincent and others are now subject. As the agitation has now subsided, an alteration for the better would now appear an act of mercy."

An application to the same effect was proved to have been made to the Lord Lieutenant of the county of Monmouth. Nothing was done, as neither of the gentlemen addressed had any thing to do with the regulations of the gaol.

A Chartist, having then proved the circumstances as to the mail from Newport, was asked by the Attorney-General—

You took an interest, I suppose, in Vincent?—I did so.

You had not been told that there was to be any meeting for Vincent on the 4th of November, had you?—No.

You, living at Newport, can tell us that there was no notice by placard or in any other way of a meeting to be held on the 4th of November?—I never saw any.

Nor heard of any?—No.

The character of Frost for humanity was then spoken to; his interference in 1832 to protect Lord Granville Somerset from violence; the taking up his acceptance on the 4th of November; and a partial contradiction to Hodge, by a woman, who saw him in bed at his own house between eight and nine. In contradiction to this story, a farmer, Thomas Watts, was called for the prosecution, who met Hodge walking very fast home about that time close to the Welsh Oak. This honest Welsh farmer was curt and sturdy in his answers to Sir Frederick Pollock.

You say you always keep your clock before the time?—Yes, to get the servants up in the morning.

So that there is always in your house true time and apparent time?—I do not know about that; I cannot say that exactly; I know that I make a point of doing so, to get the men off in the morning.

What is the difference between true time and apparent time generally? Suppose one wanted to find what was the mean time?—I do not trouble my head about such nonsense as that.

You have been somewhat serviceable in the course of this prosecution?—I have, and I intend to be again if I can.

Mr. Attorney-General. What do you mean when you say that you have been serviceable upon this occasion?—I have taken twenty-three of the prisoners myself.

This stout anti-Chartist was the only witness called to contradict the case for the defence, and Sir F. Pollock claimed his right to reply for the sole purpose of preserving the right which belongs to a prisoner in respect of evidence called in reply. His right in strictness being conceded, he merely remarked that other evidence in contradiction might have been called, and was not.

Mr. Kelly commenced the summing up of the evidence for the defence with an eloquent exordium.

"The time has at length arrived when the duty devolves upon me of addressing you in defence of the life of the prisoner at the bar, for his life is committed to your hands: a duty by far the most solemn, the most painful, and the most awful, which I have ever yet been called upon to discharge. Gentlemen, if I had felt that the fate of the prisoner could have depended upon my ability duly to perform the task allotted to me, I never would have consented to place myself under so fearful a responsibility; but I have felt that he is amply protected by the law and constitution of his country; by enlightened, learned, patient and impartial judges; and, above all, under Providence, by that mighty and impregnable rampart which encompasses and covers every subject of this realm, guarding him in the enjoyment of his rights, his liberty, his property, his character, and his life,—a jury of his fellow-countrymen.

"The Attorney-General, in his opening, seemed to anticipate that we might deviate from the straight and honourable course before us, in defending the prisoner, into something like an attempt to induce you to depart from the strict letter of the law. So far from this, it is in the law, in the strict undeviating performance of the law, that I place my hope, my only trust. It is my prayer, therefore, that you should follow it; that you should be guided and governed by it; that you should attend and adhere to the law, and to the law alone, because I feel that, by that law, I shall prove to you, clearly and satisfactorily, that the prisoner, whatever may have been his misconduct in other respects, however high the crimes and misdemeanors for which in another form he might have been indicted or punished—I feel that, by the law of high treason, he is as guiltless as any one of you, whose duty, I hope, it will soon be so to pronounce him. Gentlemen, if the prisoner at the bar be at this moment in any jeopardy or danger, it is from the law not prevailing, or not being clearly and perfectly understood. It is because the facts, which are in evidence before you, undoubtedly disclose a case of guilt against him; because they do prove that he has committed a

great and serious violation of the law; because he has subjected himself to indictment and to punishment, that the danger exists—a danger from which it is for me, by all the humble efforts I can command, to protect him—that you, finding that he has offended against the justice of the country, should condemn him, not for the misdemeanor which he has really committed, but for the great and deadly crime with which he is charged by this indictment. I therefore, Gentlemen, beseech your calm and patient attention, while I endeavour as shortly, as concisely, and, I will venture to add, as fairly and candidly as I can, to lay before you, subject to the correction of their Lordships, the law, as it affects this high and serious charge. And if I should be fortunate enough to do so, I undertake then to satisfy you,—to convince the most doubting among you, if there be any more doubting than the rest, when I shall refer you to the testimony of the witnesses,—that this charge is not only not proved, but that it is absolutely and totally disproved even by the evidence for the prosecution. The question here is,—not whether a great and alarming riot has been committed? the question is, not whether blood has been shed, whether crimes, which are, as they ought to be, punishable by law, have been perpetrated by many who may be the subjects of this indictment; but the question is, whether the prisoner at the bar has, by competent legal proof, been proved, beyond all reasonable doubt, in the mind of any one of you, to have levied war against Her Majesty, with the treasonable intent which is stated in this indictment? The Crown must satisfy you that the prisoner at the bar has levied war; that he has levied war against Her Majesty; that is, that he has conducted these armed multitudes, and committed, if he has committed, outrages with them, and concerted with them, or engaged them, to commit them; and not merely that he has done all these acts, but that he has done them against the Queen, that he has levied war against the Queen and her Government. And then, further, it must be proved to you that that was done with the intent, with the design, which is stated in this indictment. These three things, then, must be established, not so as to call upon the prisoner to disprove them, but they must be affirmatively, positively, and

perfectly proved on the part of the Crown, or the prisoner is clearly entitled to your acquittal: — That he levied war; that he levied war against Her Majesty; and that he did so with the intent by force to alter the law, and to subvert and overturn the constitution of this realm. * * *

"This law of high treason, more than any other law, is to be watched with jealousy and guarded caution, not merely by judges, but more especially by juries, because it is only to them that the subject can look for protection against the great, and otherwise irresistible and overwhelming power of the Crown. For a course of centuries, juries of honest, bold, loyal, uncompromising Englishmen have resisted and opposed even the Crown itself, with all its power, more especially in cases of high treason, and discharged their trust fearlessly, firmly, and impartially. I ask you only to discharge your duty, as your predecessors have discharged theirs in former times; so as to confer honour upon your country, and safety and liberty upon your countrymen.

"I do not stand here to deny that Mr. Frost has been guilty of a great and enormous offence; that he has been party to a riot of a most serious and alarming character; that, although he himself happily be guiltless of the fact, he has joined with those who afterwards have shed human blood. Though he, Gentlemen, as deeply deplores it, as deeply mourns the melancholy consequence of that unhappy day as perhaps even those who have most severely suffered by it, and yet survive, he is guiltless of the act itself; but still he bore a part in joining, in leading, if you please, these men, who afterwards, in the heat of excitement, in the phrenzy of the moment, committed the crimes which we all so grievously lament. But, Gentlemen, it is because he has borne an unfortunate part in this transaction, because, therefore, you may find that he has been combining with armed multitudes to the danger of the peace, the property, and the lives of the people of this county; and because you may, consequently, feel that he ought to undergo serious punishment, and you may be confounding in your minds the guilt which I have admitted is to be ascribed to him, with that more serious guilt with which he is charged by this indictment; it is for that reason, Gen-

tlemen, that I beseech you to bear in mind the distinction, as I will point it out to you, upon undoubted authorities, between what is unquestionably a levying of war, but yet is not of a treasonable character, and such a levying of war against the Queen as to make the party who participates in the act guilty of the crime of high treason.

"Gentlemen, in all respects the statute of Edward III. has been strictly observed, except, unfortunately, in that very part of it upon which the question before you now arises, namely, that part of it which relates to the levying of war. Lord Hale distinguishes between the mere levying of war—that is, going and attacking Her Majesty's subjects with armed forces—and the further crime of levying war against Her Majesty. What is a levying of war against the sovereign. From the power of the Crown, from the corruption of judges, from the weakness and the servility sometimes (I grieve to say it) of juries, and from the helpless condition of prisoners, a constructive levying of war has crept in, and grown up at last so as to become a part of our law.

"A real levying of war must be a marching of armed bands in military array, and with discipline of regular forces, to make war against Her Majesty and Her Majesty's forces as a foreign enemy might do; as, in fact, in the time of the rebellion of 1745, or the rebellion of 1715, or at any other period of acknowledged open civil war, forces then opposed to the Crown have done. But unhappily, in the reign of Henry VIII., a number of misguided people rose up and combined together against a statute which had been passed regulating the wages of labour. They thought, I suppose, they were not sufficiently paid, and wished to have that law repealed: they rose up into open tumult, and committed a riot and a disturbance, in order to compel the constituted authorities of the realm to alter the law, to repeal that statute, to give them, in fact, higher wages, and that case was, by the judges of those days, held to be a levying of war against the sovereign, and to amount to the crime of high treason. The judges strained, they perverted, they distorted the facts of the case into what no man of common plain sense, under-

standing the English language, would ever have called a levying of war against the sovereign. The judges of that day held it to be a levying of war.

"In the next reign, something else—some meeting to pull down inclosures, was held to be a levying of war. Judges then were not independent; and Lord Hale has pronounced an emphatic warning against their interpretative levying of war. 'In my opinion, if new cases happen for the future that have not an express resolution in point, nor are expressly within the words of the 25 Edward 3., though they may seem to have a parity of reason, it is the safest way, and most agreeable to the wisdom of the great act of 25 Edward 3., first to consult the Parliament, and have their declaration, and to be very wary in multiplying constructive and interpretative treasons, for we know not where it will end.'

"If you are to magnify, and distort, and exaggerate a riot, however wicked, however dangerous, into high treason, how do you know that any one of yourselves may not, in some unhappy moment of excitement, in a moment of heat and intemperance, give utterance to expressions which will excite the passions of the multitude to break out into open violence; and, instead of your being subject to the punishment which you would deserve for a misdemeanor, to fine, to imprisonment, to anything that the law will inflict upon a man guilty of that offence, find yourselves, upon the very precedent which you may have laid down to-day, indicted by the Attorney-General for high treason, and your lives, and your children's, and your children's children's names, property, character, and welfare placed in danger and in jeopardy? Gentlemen, beware of establishing that precedent. Remember the language of Lord Hale, 'We know not where it will end.'

"In earlier times marches of bodies of armed men much more manifestly and palpably dangerous, ay, and more destructive than any that is proved before you to-day, under this very statute of Edward, have been held not to amount to treason, not to be a levying of war against the sovereign. The Earls of Gloucester and Hereford fought with their

retainers, killed many, burnt houses, and committed divers outrages: yet, as it was in a private quarrel between them, it was only a great riot and contempt, and no levying of war against the King; and so neither at common law, nor within the statute of 25 Edward 3., if it had been then made, was it high treason."

Mr. Kelly then complained of the vagueness of the Attorney-General's statement of the intent to supersede and destroy the authority of the Crown. "Now, I must say, I looked for something more explicit from my learned friend. I know of no statute which makes it high treason to 'supersede and destroy the authority of the Crown.' I know not what is meant by superseding and destroying the authority of the Crown. Why, if you lay hands upon a single constable and stop him for a moment in the execution of his duty, you destroy for the time the power of the Crown. I only pray to God I may not prejudice the prisoner by what I am going to say. I freely admit to you that, if Mr. Frost did intend and design to attack the soldiery at Newport, to make himself master of the town, to stop the mails, to seize the post-office, and make thereby a signal to other persons with whom he was in confederacy at Birmingham, and that, upon that signal being made, they were to rise into rebellion in order that they might thereby proclaim the charter to be the law of the land—Gentlemen, I admit that that was high treason, and he must go to an untimely grave for the offence which he has committed. All these were merely acts conducive to an ulterior end—that the law of the charter might be proclaimed at once throughout the land. That object has absolutely no existence but in the statement of the Attorney-General. And I beg to ask you, now that we have been here assembled an entire week, have you any evidence before you—have you one word, have you any act, any declaration which shows at this moment what the charter was?

"My learned friend, Sir Frederick Pollock, indeed, conscious of the perfect innocence of his client with reference to that view of this case, and believing that he could not be injured by any thing he might state, certainly did, in his opening address, enter into the subject, and stated to you with so little

information himself, that he blundered (if he will forgive the expression) in making the statement, it not being either in our briefs, or in the evidence, or any thing else; but in the course of his speech he told you what he had understood were the four or five articles of the charter, and gave the first insight to the judges—to you, unless you knew it before, to any one in this court, as far as the evidence is concerned—of what the charter is which was to be proclaimed as the law of the land. I do believe that there is not one particle of evidence at all bearing, tending, or pointing towards this essential, indispensable portion of the opening of the Attorney-General; not one particle of evidence pointing, in the remotest degree, to an intention to declare the charter as the law of the land. Out of the thirty-nine witnesses whom they called—out of seventy whom they ought to have called—there is not one that has even pronounced this word 'charter;' and yet this is said to be a treasonable conspiracy to make the charter the law of the land! The object was clearly opened and proved in Lord George Gordon's trial; and again in the cases of Horne Tooke and of Hardy the charge was plain to overturn the law and government of England, and to establish in its place a convention similar to that which existed in France. When we come to Watson's case, we find that design was also to subvert the constitution of the country.

"Again, when Thistlewood and his confederates were indicted for high treason, they were charged with a substantive act of treason, namely, with an attempt to murder the whole of the cabinet ministers on a particular day. In all those cases, the effect, the object, the nature of the alteration of the law which was to be obtained by the illegal measures of the parties accused was fairly stated in the opening speech for the Crown; and it was such, that the prisoner's counsel had the means of dealing with it in evidence. But here, in a case in which the question of treason or no treason depends, not upon whether there was an armed and mischievous multitude, which I have admitted over and over again there was, but upon whether the prisoner at the bar and others designed to overturn the government of the country, and to establish some other system in place of it, and where the Attorney-

General has opened what would no doubt amount to the crime of high treason, if it were proved, that the object was to overturn the government of the country, and to proclaim the charter as the law of the land throughout the country, you have not one particle, one iota, one letter of proof, from the beginning to the end of the cause, tending to, pointing at, or bearing upon, that subject. The evidence tends to show that the purposes charged never were entertained, and that it was impossible they ever could have been entertained. Arriving at Newport, says the Attorney-General, they were to attack the troops. It is extremely remarkable, if such an intention was entertained, that, passing as they did, yet cautiously avoiding the poor-house, where it is in evidence that the troops were stationed, it never seems to have entered into the contemplation of any one of them to attack that house, to assail the troops there, no, nor even to mask them by investing the place and surrounding it with men — no, nor even to keep a watch upon them, to see whether they were likely to come down and take part in the affray.

"Is it not wonderful, when you are here trying men for their lives upon a charge, the very essence of which is, that they intended to do certain things, that you should find that not one of those things has been even attempted. If even the fact were as clearly proved, as conclusively as it is disproved, that they never meditated an attack upon the soldiers, or that they ever did deliberately and knowingly make an attack upon the soldiers, still you would have to consider the ultimate purpose, the object with which that attack had been made or meditated. But, Gentlemen, I deny upon the evidence that there is the least pretence for saying, that either the prisoner at the bar or any of the numerous multitude which came down upon Newport on the 4th of November, ever, for one moment, seriously intended to make any attack whatever upon the soldiers. In no instance do they appear actually to have done or attempted any one of the things they are said to have meditated, and by means of which they were to effect their treasonable object. If, when they left the hills 10,000 strong, they did intend to attack the military, why, I ask of my learned friend, why, I ask of you

to answer to yourselves, why did they pass the poor-house, with the diminished forces of Her Majesty within it, without making the least demonstration?"

After a severe objurgation of Harford and Hodge, who invented treasonable declarations, and stated a report that the soldiers were all Chartists, Mr. Kelly continued tauntingly: "Will the Solicitor-General have the goodness to explain to you, for it does not occur to my organs of comprehension, how it can be explained, why Mr. Frost should go and encourage men to hazard their lives in attacking the military, when he had learned, an hour or two before, that the military were all Chartists, all ready to join them, and only waited till the Chartists should go to Newport to join them, and that their arms and ammunition were packed up? Gentlemen, I defy the Solicitor-General to answer that question upon this trial of blood, of life, and death. I defy him, unless he contradicts his own witness, unless he discredits the man who has made this statement, unless he admits that this statement is false."

This defiance was rashly hurled, and the sophism too patent. Frost might connive at the uttering a false report to encourage waverers, and keep up the courage of his followers; yet, knowing the truth, determine on leading them to the attack. The advocate was too acute not to see the easy solution of his fancied difficulty, and thus ingeniously met it. "If somebody came up and deceived the people with the idea that the military were going to join them, then they at least did not go with the intention to attack the military.

"The witness Harris, who heard on the march that they were enough to eat Newport, had declared before the magistrate that he did not know what was said. If the case of treason stands in need of the evidence of a witness like that, shame upon a government that will endanger the life of a fellow-creature upon such evidence! I tell you, fearlessly, and careless of contradiction, that it would have been a worthier and a more honest part to have kept back the witness altogether, rather than to have brought forward a witness (thereby admitting that the proof of treason is not

complete without him) who they knew, for they had read the depositions to which I have called your attention, had sworn falsely, and who they must be obliged to admit before you is a perjured man. My learned friend will answer that as he thinks proper.

"They did not deliberately attack the soldiers; and that being the only act distinguishing this from a common riot, then it becomes a common riot. Not a single shot was fired after the military were unmasked. If one gun had been fired into the room it must have taken effect; and when you find that, from the moment when the shutters were down, and the soldiers placed themselves in regular military line against the window and fired a volley out upon the mob, there is no distinct proof of any gun having been fired into the room, when you find that, if a single shot had been fired, it must have taken effect, — it is perfectly clear that they went there to demand their prisoners. The boys were mistaken who said they told Frost a dozen military were gone to the Westgate. It is quite impossible that Mr. Frost should have asked that question, or that any such answer should have been given by those two boys.

"Frost's character for humanity contradicts the notion that they went there to attack the military: his wife and children left in the house contradict it. If you in an evil hour were to be stimulated by bad passions to embroil your country in civil commotion and bloodshed, and you were to seek to carry your objects in a town in which your wife and five or six helpless children were dwelling, would not your first act be to give warning to them? 'Go and visit your friends at Bristol, or somewhere else, far from the scene of danger.' If we look back upon history, we find that many a revolution has been prevented by some friendly warning given by a conspirator, not to a wife or children, but to some friend whom he may have regarded; and can you believe that Mr. Frost, who has received a character for humanity, and particularly in the social relations of life, would have stirred up this rebellion — would have set the town in which he dwelt in flames and confusion, and have spread ruin and bloodshed, his own wife and children living there, without a warning being sent

to them to retire a few miles further, or go elsewhere till the tumult had subsided?

"Why, Gentlemen, is it not idle, is it not trifling with you, to say that these men, one of them the prisoner at the bar, having a character for humanity, being always adverse to violence, interposing, at the risk of his own person, to prevent violence being done either to his enemies or friends, preaching peace and good order even in his most violent declamations; and when, leaving his own wife and children upon the spot, he retires from the place weeping, as the witness described, on perceiving the mischief that had happened,—can you, I ask, believe that they went intending to enter upon a scene of massacre and horror which would be enough to terrify the boldest and bravest man that ever trod upon this earth? It is impossible. You find that Zephaniah Williams acted in the same way. You find that all the mob, as soon as the soldiers fired, retreated. Mr. Frost, even before they fired, went away. Zephaniah Williams, as soon as he heard that there were any military, turned round with all those who were attached to him, and they returned to their residences upon the hills. I say therefore, Gentlemen, that to believe that this body of men, or any of them, seriously or deliberately intended to attack the military, is contrary not only to probability, but to possibility. Look at their acts, and judge whether they meditated what they are charged with meditating. It is said that 5,000 or 10,000 men went down to Newport; that one object was to blow up the bridge. Why did they not do so? They had powder, they had arms; at least such is the evidence, if you are to believe it. They had the means; but there is not the least attempt made to do any thing of the kind. Why did they not do it?

"Again, with respect to the post-office, it is said that their object was, for the purpose of giving this signal, to stop the communication by the post from Newport and the rest of Wales to the North, by seizing the letters. Why, Gentlemen, we have not heard that the post-office was guarded by any military force, or that the letter-box was in a castle. I believe that it dropped from somebody or other, that it was a woman who kept the post-office. I rather wonder, then, that those

men did not do what they are supposed to have meditated. Why should they not do it? It is one of the acts they are charged with designing. This is not charged as a riot. I have over and over again admitted it to be a riot; but the treason charged is the intention to create a rebellion, in order to subvert the laws; a design to do those several acts previously, and, in order to accomplish that end, to blow up the bridge and seize the post-office. Why did they not blow up the bridge? Why did they not seize the post-office? They could have done the latter, they could have seized the post-office in five minutes, and with much greater ease than I have addressed the last few sentences to you.

"Did they intend to stop the mail? There was none: there is no mail whatever from Newport to Birmingham. It could not therefore have been the design of Mr. Frost, or any body else, that the non-arrival of the mail should be a signal for the Birmingham people to rise."

Mr. Kelly then made a short summary, *à la Somers*, of the disproof.

"I have gone through this part of the case, because it is now the last shred, the last remnant, of the case for the Crown. They set out with telling you that this mob intended to establish charter law throughout the land. I have already said that there is not to be found in the evidence of any one of the witnesses, given in either of the three long days, the word 'charter' introduced. So much for that purpose. They say next, they were to blow up the bridge. They never attempted it. They say, they were to attack the military. They passed by the station of the military, and never attempted to attack them, or insult them: they went to the place where the military were, and the moment the military appeared, they received their fire, and dispersed. They were to seize the post-office. They did not do so; they never attempted it, and they could easily have done it, for a woman keeps it. And now, upon this last part of the evidence, they call upon you to sacrifice the life of a fellow-creature, to send him to an untimely grave, because the signal was to be the non-arrival of the mail! There is no such mail; and there could be no question whether the mail was to arrive, or not

to arrive. The mail would have gone, whether Newport existed, or had been burnt to ashes.

"Frost's declarations of treasonable design rest on the testimony of two perjured witnesses, Harford and Hodge. There are some few casual expressions from some other witnesses; but the main, lengthened, detailed statement or exposition of the supposed plan rests upon the testimony of Harford and Hodge. Well, then, if that be so; if you find that the only two witnesses who are to prove the material part of the case, the declarations from which this treasonable design that is to forfeit so many lives is to be inferred; if both those witnesses are open to this imputation upon their character, that they came to save their own lives, at all events to save themselves from trial and punishment at the expense of another man, and that man the prisoner at the bar; if you find, as to one of them, that he states what he must have known to be false in answer to my question; if you find, as to the other, that, not merely upon statement or reasoning of counsel, but upon the evidence of unquestionable witnesses, called on the part of the Crown, he has stated what is proved to be false, I ask you, in this case of life and death, if at least, for I am not bound to go any further, it is not sufficient to raise a serious doubt in the mind of some, or one, or all of you, the existence of which doubt entitles the prisoner by law to his acquittal.

"Gentlemen, the last time that I was engaged, painfully for myself, in the defence of human life, I believe it was before one of the learned judges who now sit here, upon a trial for murder; a son was indicted for the murder of his father. In that case the prosecution was supported, as here, upon declarations and statements, the supposed confession of the prisoner. The prisoner was supposed to have confessed that he had shot his father first behind the head and then had shot him in front. The Court called upon the counsel for the prosecution to prove something at least to support that statement, and to show that the appearance of the body corresponded with the supposed confession. The only surgeon who was called found a deadly wound behind, so far corresponding with the confession; but there was no distinct evidence of a

wound before. Upon that evidence, and I think I may say to the satisfaction of the learned judge, but at all events upon that evidence, though not in a case of high treason, and not attended with the bloody consequences attending a conviction of high treason, the jury, upon the doubt raised by that evidence, refused to convict, and in the face of a body of evidence, which, if I had to contend with here, would be so overpowering that I could hardly endure to meet it or confront it,—the jury acquitted the prisoner upon the charge.

"Under these circumstances, I say, they have not proved to you that which the law requires, that this levying a war (if it was a levying of war) was with intent to subvert the Government; because they have not proved any one of those acts to be done which they have brought forward, and seek to use as evidence that any such intent existed.

"It may be expected, before I sit down, that I should say something to you of what the real intent in the mind of Mr. Frost was. Gentlemen, I, once for all, enter my solemn protest, while pleading for the life of a fellow-creature, against such a task being imposed upon me. I say that the Crown are bound by sure, by certain, evidence, by evidence that can admit of no rational doubt in the mind of the most doubtful, to prove that intent themselves, and that they cannot call upon me to explain or disprove it. You find that great interest, very great excitement existed in consequence of the fate of Vincent; they talked of petitioning the Queen to liberate him, or to mitigate his punishment. You find that it is now proved that Mr. Frost himself, taking a strong interest in this man's fate, wrote to several magistrates, so lately as the month of October, endeavouring to procure some little amelioration of his condition. You find that all these efforts failed; nothing was done, nothing seemed likely to be done. Those men were likely to suffer the full term of their imprisonment; the complaints of their friends and former companions were treated, if not with contempt, at least with utter disregard.

"Gentlemen, it is perfectly clear that many of those unfortunate, misguided men had meditated an attempt to rescue Vincent from gaol, and many of them, perhaps a large number

of them, would at any time have been ready to march down to Monmouth, or to the magistrates in any other part of the county, in order to compel, by force, the liberation of their friend and companion, and one who had been deemed—God help us! I fear very erroneously—but whom they had been taught to think their adviser, their counsellor, and their instructor. I am here speaking again upon the evidence for the prosecution. I think it is the evidence of Saunders. He says, on this very night of the 3rd of November, or even, I believe, on the Monday morning, while they were in full march to Newport, he had his house full and his barn full of people, and he had been told by those people that they were going forward in order to liberate Vincent from gaol.

"Gentlemen, let me say here, (for I am obliged to take this guarded course, and to explain, lest what I say in favour of the prisoner might be construed against him,) let me say, under the correction of the learned judges, that if these men had conspired and combined by force of arms to go and burn down the gaol of Monmouth for the purpose of liberating Vincent and the other three prisoners that were there, and if, in order to compass that design, they had massacred a large body of the Queen's troops, though it might have been murder, and though, at the least, the very attempt would have been a high misdemeanor, grievously punishable, yet it would not have been high treason; because the crime of high treason consists in the compassing of some general and universal object, like the subversion of the Government, or compulsion against the whole Legislature, or one or other House of Parliament, to alter the laws. Therefore, if those men marched down to Newport with the intent of liberating Vincent, however criminal the means, still their offence is not high treason.

"The phrase used by Zephaniah Williams when Saunders said to him,—'Why, a great number of the men who have been taking refuge in my house from the wet tell me you are marching upon Monmouth, and are going to liberate Vincent.' 'No, we do not attempt that; we are going to take a turn as far as Newport'—shows this was the object that they had in view, and if you find that all they did was limited

to that; how, in the name of common charity, of truth, and justice, can you stretch out this offence to the mortal crime of treason?

"But you find that is confirmed by other witnesses with respect to Frost. He does not say, 'Fire upon the inn,' he does not say, 'Fire upon the people,'—'Blow up the bridge,'—'Seize the post-office,' or 'Attack the military;'—'Confront and assail the soldiers,'—but, 'Go, my men; turn round and show your appearance in front.' Why, what is this? it shows that there was an agitation, that there was an excitement, that there was a feeling of grievance or ill usage on the part of these men. They were ready, no doubt, to embark in any enterprise for the rescue of their friends in prison; but I call upon you as Englishmen, as fathers of families, as those who, like your predecessors, are to be the eternal safeguards of the liberties of our country, to put a more mild and lenient construction on their conduct, and to believe that they acted in this manner for the sake of making a demonstration of their force, in order to insure a favourable reception of the application which they were about to make to rescue Vincent and their other friends.

"Demonstrations have been made, not for particular but public objects, yet not held treasonable. Witness the 100,000 men at Birmingham, ready to march to London, in order by demonstration of physical force to overawe the House of Lords, and compel them to pass the Reform Bill; the meeting at White Conduit House, when a large body of men went at another time down to the House of Commons. Nobody ever dreamed that they were guilty of treason.

"It is wild exaggeration when these undisciplined 5,000 men are called a marching army. Why did they go to the Westgate, and how came they to do that which they did at that spot? I say that they went to the Westgate Inn for the purpose of requiring, and, if driven to it, of compelling the liberation of their fellows; a highly criminal act, I do not dispute, but no treason. The Crown say that when the multitude went to the door of the Westgate Inn, their cry was, 'Surrender yourselves our prisoners.' That is their case. I say they never made any such demand; they never

had any such purpose; they sought to liberate their own friends and fellows; and that which they demanded, and all that they demanded, was, 'Surrender or give us up our prisoners.' That is my case. You shall judge between us. The demand, 'Surrender yourselves our prisoners,' is proved only by one witness, Oliver, out of thirty-nine witnesses whom the Crown have called before you,—out of seventy, who are on the back of the bill, who must have given evidence before the grand jury, and who might have been called before you. Strike out the word 'yourselves,'—make it 'Surrender our prisoners,' and his testimony is consistent with the five witnesses who prove that they heard the foremost of the mob go forward and say, 'Give us up our prisoners.' Why then, Gentlemen, if that evidence stood alone, I ask you whether there is any one among you could sleep in your beds at night, if you were to put a man to death upon the evidence of a single witness, trusting to his accuracy in speaking to a single word, who admits that he heard these words imperfectly, and that they were used in a scene of great confusion, danger, agitation, and alarm? Williams, the witness for the Crown, says the demand was, 'Give us up our prisoners.' But Williams must have been examined by some of those creatures who are getting up the evidence to shed the blood of their fellow-men; and that witness's evidence has been kept back from you, because, peradventure, it was discovered by somebody, that if he was examined, he could prove that the real demand was the release of the prisoners, and that would have gone far to disprove the charge of high treason."

Mr. Kelly wound up his impassioned and argumentative speech with an eloquent peroration.

"If you are asked by the Attorney-General to declare by your verdict—and so to consign fourteen victims to death—that they meditated treason; that they intended by force to overturn the Government of the country and to alter the laws—I implore you to look through the evidence, and say whether you can lay a finger upon a word which points to a design so extensive, so wicked, so criminal? I ask you, when you are considering whether they did entertain this design, to look to the character of the witnesses who are to prove it;

to look to their situation, to their temptations to save themselves, and to give evidence in order to do so. They have all the wit to know that they must give important evidence against the leaders, one of whom is the prisoner at the bar. Look also to the facts themselves, and when you find that this unhappy man is charged with having meditated five or six distinct, tangible, positive overt acts of treason, the burning of the bridge, an attack upon the soldiery, the seizure of the post-office, the stoppage of the mail, and the making of signals, ask yourselves whether any one of them was done; whether any one of them was even attempted; whether, as regards all of them, there was not a moral impossibility. If you find that to be so; if you find that these treasonable declarations upon which you are to sentence to death so many of your fellow-creatures are not borne out by acts; that they rest only upon the testimony of witnesses contradicted, contradicting themselves, stating impossibilities, and covered with doubt and with suspicion; I ask you then, in this highly criminal case, upon every principle which pervades the law of England, or which blesses, and softens, and purifies the human heart, to dismiss the evidence altogether.

"But, Gentlemen, when I come back to the great question, Did the prisoner at the bar even for one moment contemplate the seizure of the town of Newport, the breaking out into open rebellion, a military conflict, or a bloody massacre on that 4th day of November; I ask every one of you who has a human heart within his bosom, every father, every son, every brother among you, can it be credible or possible that he would have done so, leaving his helpless wife unprotected, exposed to all the fury, to all the danger, to all the bloodshed which would have surrounded them—his wife, his five helpless daughters—I believe both his sons—and that without a word of warning to them, without a single line or syllable to say, 'Put yourselves for a time in some place of safety.' Gentlemen, it is impossible; he must be not only a traitor, he must be a monster in human form if he could do so.

"It may have occurred to some of you that there are some points of this case still involved in mystery, and mystery which might have been explained away by witnesses whom

you might suppose it was in the power of the prisoner to call. Gentlemen, it is due to him to make one observation upon that point. If the Crown had indicted him for a high and aggravated misdemeanor, if they had treated this lamentable outbreak as an atrocious and criminal riot, highly punishable, but not affecting the lives of those people who had been parties to it, he would have been able to bring forward, with a safe and easy conscience, his witnesses to prove his innocence, or even to explain or mitigate his guilt. But when the Crown have determined to proceed upon this charge of high treason, which involves the life and the dreadful death of every one directly or indirectly engaged in it, Mr. Frost is in this situation: he cannot bring forward one witness to his conduct upon any part of that unhappy day without making that witness himself liable to prosecution, possibly to conviction, without placing his life in imminent and dreadful danger. Mr. Frost, therefore, be it for good or for evil, is determined that, if he is to die, he will at least die alone; that he will drag down no one after him. He has not called—we have not been permitted to call—a single witness engaged in any part of those proceedings, because the prisoner at the bar will not attempt to save his own life by even endangering that of any one of the unhappy men with whom it was his fate to be connected upon that unfortunate day. Gentlemen, in common charity, then, make some allowances if parts of the case are involved in mystery unexplained, where you may think witnesses and evidence might have explained it.

"I have no more to say, Gentlemen; the prisoner at the bar, who stands, I hope, not in danger of a dreadful and bloody death (for I believe the law would even deny to him a grave), appeals not to your mercy, but he appeals to your justice. I know that, when you have considered the whole of this case, if you find, as I have feebly endeavoured to show you, that the whole of the evidence tending to prove a treasonable intent utterly and totally fails, then, Gentlemen, by law he may demand your acquittal. But I go further, and the events of this cause have taught me a lesson which even I shall never forget; if I were a juryman I should remember and treasure it up as I would my heart's blood. It

is this, that a witness, without intending to deceive, may in a highly penal case, in a case of life and death, make a mistake, a jury may act upon it, and a fellow-creature may be sacrificed, and unfortunately, when too late, the mistake may be discovered. Remember, that policeman who gave evidence, I think two days ago, told you that he had been examined before the magistrates; that he had made oath; that one Turner, after he had made oath, was committed upon the charge of high treason. That man Turner might be on his trial now for his life or death, and upon such evidence as that policeman gave before the magistrates might be convicted. He believed it then, but now something has arisen, and he has a doubt. Gentlemen, some other witnesses, less conscientious, less scrupulous, may have fallen into a similar mistake, and think, oh, think, what would be your reflections if, when this wretched man was consigned, not, as I said, to a grave, but to a dreadful death, with scarcely time for repentance for his sins, you were to meet the wife whom you would have made a widow, and the children whom you had made orphans, and you were then to discover, when it it was too late, that by some such error as that policeman made you had been misled, you had not given sufficient weight to some contradiction, you had disregarded that which raised a doubt, think what would be your reflections! Gentlemen, I have exhausted all the strength that I possess; I can only now thank you for the kindness and attention with which you have listened to me; and may God Almighty guide you to a just and Christian verdict!"

Lord Chief Justice Tindal. John Frost, now is the proper time for you to be heard if you wish to address any thing to the gentlemen of the jury beyond what your learned counsel have said. You will not be allowed to be heard after the Solicitor-General has closed the case on the part of the prosecution.

John Frost. My Lord, I am so well satisfied with what my counsel have said, that I decline saying any thing upon this occasion.

The Solicitor-General commenced his subtle and convincing reply by deprecating these appeals to harrow the

feelings of the jury. "God forbid," said the learned gentleman, "God forbid that I should hurt a hair of his head, beyond what the law and justice require; but, Gentlemen, I have a high, and serious, and important duty to perform, which I would perform, God knows, most religiously and forbearingly, but from which I dare not shrink. Why am I to be driven to repel appeals which ought never to have been made, which are inconsistent with justice, and destructive of safety? Gentlemen, you have been asked what would be your feelings if you should hereafter meet the wife whom you may have made a widow, or the children wandering as beggars in the streets whom your verdict will have made orphans. But, Gentlemen, I would ask you, if you have not the manliness and firmness to do your duty in this hour of trial, are there no wives who may become widows, are there no children who may be left orphans, but those which the learned gentleman has thought fit to present to your notice?—nay, you yourselves may leave widows, if you have not courage enough fairly to do your duty in this great hour of peril.

"Why calumniate us if my learned friend has such an unanswerable case. We are here not to hunt the prisoner down to destruction: we are here for the public safety. That safety is never better consulted than in securing justice to every individual who is called upon to answer for his acts. As to the hardship of this being a Crown prosecution for high treason, the only difference to the prisoner is, that it gives him tenfold more advantages than any other form of prosecution would give him. Several witnesses have been rejected, whose description did not correspond with that given in the list annexed to the indictment. The effect you have seen, that witness after witness has been rejected upon some such defect; not a man could be called against the prisoner of whom he has not previous notice, not a man with regard to whom he cannot make inquiry, with whom he cannot communicate, with whom he cannot place himself in circumstances which belong to no other form of trial. In addition to which, have you not heard two learned counsel on behalf of the prisoner, an advantage that would belong to no other form of proceeding than a prosecution for high treason?

"The character of the crimes compelled this form of charge, because the crimes went directly to the destruction of the constitution and the peace and safety of England. As to the power of the Crown, this is mere pretence. The Crown represents the public peace. The Crown represents the public safety. The Crown, upon the present occasion, in discharge of the trust and duty imposed upon it, has, for the sake of the peace of this country, and the peace of the kingdom in general, caused the present prosecution to be instituted. But except so far as the Crown is necessarily mixed up with the safety, the preservation of the peace, and happiness of the community, the Crown has not a shade of interest in the prosecution.

"Let the case stand according to its real character. It is a prosecution on behalf of the public to investigate a charge arising out of what has been described, and correctly described, as one of the most violent outrages;—not a prosecution, as the last learned counsel for the prisoner so frequently styled, for any 'bloody purpose;' it is a prosecution arising out of a most violent insurrection and tumult, attended with the greatest danger, calling, as my learned friend, Sir Frederick Pollock admitted, for immediate judicial investigation, and calling for punishment upon those who should, in the result, turn out to be the authors of, or connected with, these transactions. Setting this case, therefore, before you in its true character, on my own behalf and my learned friends', assuring you that our only desire is to place the case before you in a correct and proper manner, to put my Lords and you in a situation to discharge the highest public duty which can fall upon you, and that having done that, we shall feel no less sympathy for the prisoner at the bar, than either of the learned counsel, or any party who feels as well for the public interest as for individual misfortune, we shall be perfectly satisfied with your verdict, ay, and shall rejoice, if, consistent with your public duty, you can pronounce an acquittal. It will bring no unpleasant sounds to our ears, but, on the contrary, we are no less associated with the prisoner than every other individual of the public, and we entertain no other feelings towards him

than you or any other gentleman would do for one placed in his unhappy situation.

"Such being the case, Gentlemen, I pray you dismiss from your attention all mere appeals to your feelings; do not let the prisoner suffer from the course that has been taken in the case by his counsel, and the weakness which such a course generally shows; but give fair effect to those arguments which the learned counsel used, and do justice to the prisoner in spite of that manner of conducting the case, which, I say, necessarily indicated great want of confidence, while it was accompanied with the most powerful expressions of it.

"Consider what the charge really is, and the importance of the inquiry; an inquiry which will, I trust, be of great general benefit not only to this country, but to every part of the kingdom; and to these unfortunate and ignorant persons, with regard to some of whom the very object of the excursion was obliged to be translated into Welsh; persons who did not even understand our language, brought in immense masses to the spot, without knowing the object to which their attention was to be directed; told to bring arms in their hands without knowing how or against whom they were to use them; brought for the purpose of being exhibited, to the terror of the public, tools and instruments to more artful and wicked leaders.

"There was no material difference between my learned friends and myself as to the construction of the general law upon which this case must turn. The charge that it is my duty to make against the prisoner is, that prior to the 4th of November last, he believed there were large bodies of men in different parts of the country, who were inclined to rise and rebel against the Government; that he raised a large body of armed men to march into Newport, intending, either by surprise or by terror, from the numbers of those men and their arms, to prevent resistance, or by force to overcome that resistance, and take possession of the town of Newport; that he intended to supersede the magistracy and the law, and himself to exercise authority there; and that he intended to make the taking of the town of Newport a signal to other

parts of the country to rise into rebellion, and thereby to change the constitution.

"The object of the charge here is that of raising rebellion. The circumstance of his wishing to do this or that particular act in the course of it will not change its character. I therefore submit that it is perfectly immaterial whether or not he intended, when he went to the Westgate Inn, to release the prisoners. If in truth he meant to take the town of Newport—if in truth he meant to raise a rebellion, no doubt he would have discharged Vincent and the other prisoners, though their discharge was not his ultimate object; it might have been, and probably was, part of his purpose, not only to discharge Vincent, but every other prisoner who came within his power; but still, I say, there must be no mistake between his contemplating this in the course of executing a greater purpose, and those acts and intentions being the substance of his purpose in the course which he took.

"It is also immaterial to this case whether or not he had the power to do all he intended. We need not talk of punishing successful rebellion—it is unsuccessful rebellion that comes under the cognizance of the law. I cannot restrain the expression of some surprise at the course of argument that was taken by the learned counsel who last addressed you. His course of argument was this: when the prisoner was interrupted in what he was doing, 'Look and see what he has done;' where he has accomplished his purpose, 'Do not believe the witnesses.' The party having been dispersed by the soldiers, the learned gentleman says, 'See if they went to the post-office; see if they went to the bridge; see if they went to the other places'—he knowing that they were stopped before they reached those places; 'but as to marching there with arms to take the town, that I dispose of by asking you not to believe the witnesses; so that, as regards what was prevented, I ask you to see what was done; and as regards what was done, I ask you to disbelieve the witnesses, and there is an end of the charge.'

"The case of Brandreth was analogous; and in that case the conspirators proposed to march to the town of Nottingham. They pressed people as they went, as we find that such

persons always do; but before they got to Nottingham, they heard that some soldiers were coming against them, and they all dispersed and ran home. Murder had been committed in the course of the march; and, after hearing the evidence of the intention with which they had risen and armed, and with which they had marched towards Nottingham—for they never reached Nottingham, they never effected their purpose further than in the prosecution of mischief as they proceeded along—no doubt was entertained as to the character of their crime; and Lord Tenterden thus clearly stated the law:—

"'Insurrections and risings for the purpose of effecting by force and numbers, however ill-arranged, provided, or organised, any innovation of a public nature, or redress of supposed public grievances, in which the parties had no special or particular interest or concern, have been deemed instances of the actual levying of war, and, consequently, to compass or imagine such an insurrection, in order by force and numbers to compel His Majesty to alter his measures or counsels, will be to compass or imagine the levying of war against His Majesty for that purpose, within the just meaning of the modern statute. Rebellion at its first commencement is rarely found in discipline or array, although a little success may soon enable it to assume them; any act manifesting the criminal intention, and tending towards the accomplishment of the criminal object, is in the language of the law an overt act.'

"There is no difference as to the leading facts; and, instead of beginning with occurrences which took place in the preceding week at Blackwood, we thought it better to show what was done at the Westgate, and then go back in order to trace the creation and management, the origin and planning, of this insurrection; and I will say that, notwithstanding there have been some objections taken, I believe there have been, in this case, fewer objections and fewer arguments than in any case of high treason that ever was tried.

"It has excited very general surprise how Captain Gray and his gallant little band of men were enabled to disperse so large a body. They did so by their effective and steady fire; and in my humble judgment, deeply as I deplore the

lives that were lost upon that occasion, I consider that they saved hundreds of lives by the course which they took; for had the Mayor or Captain Gray, whose conduct cannot be too much praised, temporized but for a few moments, I believe the consequences would have been most fearful. It was the decisive, it was the prompt, the well-called-for execution of military power, which, in my humble judgment, saved that town and its inhabitants.

"If the military had not been there, the appearance of this mob would have been sufficient of itself to have secured possession of the Westgate—ay, and of the whole town—and perhaps without the necessity of discharging a single gun. It is said by the learned counsel, that if possession of the Westgate could have been peaceably obtained, there would have been no bloodshed, and that the prisoner had no intention of allowing any excess. But, Gentlemen, he surely knows very little of the history of mobs who does not know that men, when engaged in numbers in attacks of this sort, seem to change their nature; that they often become ferocious, and delight in shedding blood; and even if quiet possession had been obtained of that town, no one can say to what excesses those unused to power and accustomed to yield obedience might have gone. What was the meaning of Frost saying, 'Turn round and show yourselves in front?' What is the effect of showing yourselves in front to unarmed inhabitants? Show yourselves to whom; for what? How are you armed? With instruments of death. Are you prepared for action? Our guns are loaded, we have proved them through the night; stormy and tempestuous as it has been, we are ready for action; we have proved them in the intervals of the storm; they are loaded and ready; our pikes are ready, and we are ready. Do you doubt it? Before a word is said that can be pretended to give the slightest provocation, the pikes are dashed through the windows as the mob came down Stowe-hill—a pretty broad hint to the inhabitants what was to be the effect of showing themselves in front. These men did show themselves—with what intent? Why had the guns been proved? What was their determination when they dashed in the windows of the

commercial-room? What were their objects? What was the effect, but naturally to produce terror in the town? What would have been the effect if, according to Mr. Frost's intention, they had arrived on Sunday night at two o'clock, when the whole town would have been locked in sleep, and when they would have been roused from their beds, if not by guns, at least by the clamour of pikes and weapons?

"Gentlemen, my learned friend, as I think, not with much piety, frequently introduced the name of the Almighty; he has talked of the Almighty exposing falsehood. The same Providence developes truth, exposes hidden guilt, and is not known to favour conspiracy and rebellion. It is a dangerous topic for my learned friend to allude to; for he must well know that Almighty Providence is the protector of peace and order against conspiracy and rebellion. Two o'clock in the morning was the destined hour. What would have been the situation of the inhabitants, if this large number of men had entered the town, as they intended, at two o'clock in the morning? The soldiers would have been asleep at the barracks, and the whole town would have been in a state of repose, and, according to the prisoner's notion, not a single magistrate would have been upon the alert. Although, Gentlemen, he would have been mistaken in supposing that, yet I fear he would not have been disappointed in his object. At that hour it would probably have been enough to have shown themselves in front; the rest would have followed of course. For what can a peaceable town do in the face of 5000 or 6000 powerful men, of hardy habits, resolute in their minds, strong in their sinews, and with arms in their hands? God forbid that such men should often appear in such a town.

"They fire—what becomes of Frost? After that he is not seen. What! do you not stay to arrest, to restrain, to protect from this power that you have brought? Do you show them in front, and set them on, and then leave them? Where is your influence? Where is your restraint? Where is the protection to the town? You have brought them here. Where is the wife, and the daughters, and the sons that you love? Do you go away, and leave them thus? If you call

upon others to feel for your children, and your wife, show your own love and regard by coming now to their protection from the jeopardy and danger in which you have placed them. If you flee—if you leave them in the greatest extremity—you who have brought them into that danger—how will your counsel persuade a jury that you could never, from the strength of your own feelings of affection, bring them into danger? The mob remained, till a sufficient number, by showing themselves in front, as he desired them, had perished; then they dispersed. Where was Mr. Frost? We find him afterwards consulting his own safety in entering into a wood in the neighbourhood of Tredegar Park; that is the next we hear of him. What had become of that town—what had become of his wife and family—what had become of the inhabitants and his friends—he knew not. * * * * *

"They could not have raised these men with a view to relieve the prisoners at the Westgate, because at the time they collected on the mountain they had not been taken. But had it any relation to Vincent? What is their intention? We have been told again and again that Mr. Frost must not be supposed likely to do absurd things; that he is a man of the world and a man of intelligence. What then, Gentlemen, do you think of an attempt to induce the Monmouthshire magistrates to relax the prison discipline in favour of a person who has been convicted of sedition or seditious libel, or something of that sort, by marching into Newport with 10,000 men armed? What do you think of a man of the world resorting to that mode of inducing the magistrates to relax in favour of a prisoner? Is Mr. Frost a man of intelligence? Is he a man of the world? Suppose he had been the worst foe that Vincent ever had, suppose that he had desired to procure additional restrictions to be put upon him, and had wished that he should sustain the last hour of the sentence which had been pronounced upon him, could he have resorted to a more maliciously effective mode than by showing that those who were connected with Vincent were persons so little acquainted with their duty, so little obedient to the law, so little to be depended upon for their peaceable

conduct, as that they would march at that hour of the night into a town, alarming and frightening every body?

"'I protest,' says Mr. Kelly, 'against being called upon to explain it. I will not call and imperil witnesses. If he is to die, he will die alone; he will not drag them down with him.' Ay, but if the purpose is innocent, instead of his dragging them down, they will raise him up; they will save him, not he condemn them. Your statement admits you have witnesses; your statement admits you dare not call them, for they would involve your client and themselves in common guilt. You are right. You protest you will give no explanation; your course is politic; I will not say, safe. But can any man ascribe any innocent purpose to this meeting?

"Having proved the pressing of men and the seizing of arms, I ask, do you, Mr. Frost, mean to deny that you pressed men? Why man after man is called who was pressed. Mr. Brough and Mr. Watkins are pressed; they are marched about for a considerable period. What is the part Mr. Frost takes? Why, Mr. Frost, immediately he is applied to, of his own authority, consulting nobody, says, 'You are discharged, and your friend is included with you.'

"My learned friend said, Lord George Gordon gave a protection to a party. So he did. I own I always thought that the use of that protection by Lord George Gordon against him was a very harsh step; it never brought to my mind evidence of any thing, but that Lord George Gordon regretted that which he had done, and was desirous of doing all that he could upon the prayer of the man who was in alarm and distress. It is a memorable circumstance, for it gave occasion to one of the strongest expressions that ever counsel ventured to use of his opponent, in reference to that particular piece of evidence.

"Now, having proved the meeting of such a large body of men, at such a time, not suddenly called together, look at their arms. You will find from the evidence, not that they all threw away their arms, as was said, but that a certain number threw down their arms, which were picked up. Vast numbers of them were armed. Persons were stopped upon the road that they might not give information of the meeting. We called some of the men who were pressed; and then my learned

friend lays down a principle which, I own, strikes me with surprise, and which cannot but be a very alarming one in this district. What, if the Chartists come from the hills by thousands, and press men to go along with them, shall no one of those men be received as witnesses of what they do? Do they become infamous by force of that pressing? Is it to be a means of protection to those who commit such illegal acts, that they prevent evidence being given against them because they will compel every man they meet with to go with them, who, therefore, my learned friend says, shall be liable to be charged with treason?

"A man of the name of Harris was among the number. Harris is the man who proved a certain declaration of Davies in the presence of Frost; he is the man who was cross-examined by one of my learned friends, who read a great part of a deposition which showed that he had been examined the day before, and had made some statements that he disavowed on the following day, and stated in the course of his account that he had been drinking with a soldier and a constable, upon which my learned friend, Sir Frederick Pollock, broke out into a most violent philippic, as though the soldier and the constable had any thing to do with the present case. But neither my learned friend the Attorney-General, nor either of my other learned friends, had ever been acquainted with that deposition at all; and I beg leave to say, that though I do myself believe the man, when he states that he was afraid to speak out, I agree with Mr. Kelly that it is not fit that I should ask your verdict upon the evidence of a man who has once denied that which he asserts; and I beg to strike him out of the case. I know I have the concurrence of my learned friend, the Attorney-General, when I say that every fact that you think is brought into reasonable doubt, I shall pray you to forget. A witness has been called respecting the demand of prisoners made by the insurgents on the special constables stationed before the Westgate Inn. We called a witness in the first instance, who said that the insurgents addressed him, and said, 'Surrender yourselves prisoners.' Some witnesses have been called, on the part of the prisoner, who have said that the words were, 'Surrender your prisoners.'

A person was called to-day, of undoubted respectability, who says the words used were, 'Surrender your prisoners.' One says he heard the word '*selves*,' the other did not. Gentlemen, I consider that much too doubtful a ground to stand upon. We have called a witness who swears he heard the word. The prisoner has called a respectable man, who swears to speak the truth, who says that all that he heard was, 'Surrender *your*,' omitting the word '*selves*.' It is too minute to warrant the Crown, in my opinion, presenting it to you as a ground for judgment. I neither impeach the credit of the witness for the prisoner, nor surrender the credit of the witness for the Crown. But when it comes to a doubtful point like that, it is not fit matter, in my judgment, upon which the Crown should stand, representing the public interests, in so important a case as the present. I therefore shall meet the case as though no such evidence had been given."

An adjournment having taken place at this portion of the Solicitor-General's speech, he the next morning, Wednesday, the 8th of January, recapitulated the law with great force.

"What is treason, as applied to this particular case? It is the levying war against the Queen in her realm. What is levying of war? The rising of armed men for the purpose of destroying and superseding that state of government which affords protection to the rich and to the poor, which tends to give prosperity to the country, and makes that prosperity conducive to happiness. The levying of war, therefore, does not consist in taking resentment against the occupier of a particular house; pulling his house down and murdering the inmates; nor in any given number of persons doing mischief towards individuals; but the levying of war relates to the public, relates to some general object, relates to the superseding of the law and the assumption of a power independent of the Crown, representing the law and the justice of the country. What, therefore, you have to look to here is, to see what was the nature of that object, purpose and intent, with which the prisoner at the bar acted in the prosecution of these transactions which have been proved before you in evidence. Was he operated upon by resentment to any private individual, or was he acting in furtherance of some general design extending

to the law, to the Government, to the authority of the Crown, and to the peace of the kingdom? It is the general object which is necessary to be established to warrant a verdict of Guilty against the prisoner.

"Having called your attention to the law, in order that you might be better able to prosecute your investigation into the evidence, that this meeting was not sudden—that it did not arise out of any immediate occasion—that it must have been the result of long providing—long preparation, not in furnishing the means of peace—not in presenting motives to influence either the Government or the magistrates to kindness and concession, but in the providing of arms which could have no other use than that of violence. A large body of men are found on a particular night ready prepared with arms—arms of the most fearful description—meeting in thousands—proposing to march into a peaceable town in the dead of the night, that night Sunday night, when persons would be more likely to have retired early and peacefully to rest than on any other day of the week; and when they start, it being part of their plan to arrest persons who shall be found on the road, and a pass-word is established."

The comments of the Solicitor-General on the pass-word "Beans" were ingenious. "You observe that in the town of Newport there is a place called Beanswell. The name of that place was divided in order to form the pass-word. Those who were associated for this purpose were, when they met a stranger, to use the word 'Beans.' If the other was of the same party, engaged in the same object, he was to answer 'Well.' So that the one using the word 'Beans,' and the other using the word 'Well,' they immediately knew that they were associates in the same object; and therefore might concert together. What had a pass-word to do with a peaceable object? What had the arrest of persons upon the road to do with any peaceable exhibition? What had seizings of arms to do—what had the prevention of peaceable passengers upon the road to do with any innocent objects? Why were Mr. Brough and Mr. Watkins to be arrested in the course of their lawful journey? What proper peaceable object required that? What proper peaceable object could be pro-

moted by that? Why should they be marched for hours through the night? Why should their lives be threatened if they attempted to escape? Gentlemen, let me ask what would be the marks that would attend an insurrection intended to operate treasonably against the public peace?—Arrests, restraints, seizing of arms, making prisoners. What else could you have to mark the character of an insurrection? How shall you distinguish between that which is intended to be peaceable, and that which is intended to be violent?—By interference with the rights, the peace, the actions of others. Why did they meet at the hour I have mentioned? Why meet in such numbers? Why so much time and labour, in the preparation of such arms as you actually saw? I have already called your attention to the fact, that Walker, having been sent out in consequence of some surmises or information, no matter which, is attempted to be arrested upon the road; he endeavours to pass on; he is seriously wounded, and a pistol fired at his companion. This is done to men who are opposing nobody—offering no resistance to any object, proper or improper. What does this indicate?

"Gentlemen, such was the nature of that meeting; thousands assembled together on Sunday night, in the dead of the night, armed—with every precaution—arresting, pressing men, and seizing arms. Not only so, but care taken to see that their arms were in a condition for instant use; not merely loaded, but tried to see that they were not affected by the wet or other circumstances, to prevent their immediate execution; they are tried during the night; so that their march into Newport at the destined hour was to be accompanied with the power of making severe execution, should it be determined so to do. Gentlemen, it is for you to say what such a meeting of itself indicates. I ask you to pause here. Let that mass march towards Newport; see them in the acts which have been described to you; see them proving their guns; see the men at the machine, with their hooks, to use the expression of the witness, 'planning it, showing how they were to be used;' see them arresting persons upon the road. I ask you what is the character of such a meeting?

"This prosecution for high treason is very distinguishable

from many others. No spies are produced before you here; no persons have mixed themselves up with this treason, either for the purpose of acquiring information, or for the doing of that which spies too often do, who are almost as dangerous as the mobs that they are put to watch, who seldom are employed but they exceed their commission, and assist in fabricating the mischief which they expect to be rewarded for afterwards disclosing. The prisoner cannot object that some are Chartists, least of all can it on his part be imputed to those men that it is a mark of bad principle. He himself was among the foremost, and, as you are told, the most zealous. He, therefore, cannot challenge the respectability of a witness because he is a Chartist.

"See whether the evidence produced is the result of a little assembly of persons associated together, who may have conspired, who may have had motives to combine together, and to misrepresent, or see whether they are persons altogether independent of each other. See whether they come to prove declarations made at one place, where heat, excitement, mistake, or misapprehension may have mixed themselves up with the evidence given before you of the declarations made; or whether the witnesses themselves, being independent of each other, speak to representations by different persons engaged in the same object, made at different places and under different circumstances; but though made at different places and under different circumstances, yet all tending to one conclusion.

"What are the objections made to their testimony. It is for you to hear and to judge cautiously and anxiously what weight is due to those objections against that testimony. If they are such as to shake the credibility of that testimony, strike them out, till you have struck out all, if none are deserving of your credit. But, Gentlemen, this is to be remembered, that no duty is more imperative upon a jury — there is none in which the public interest is more deeply involved — none by which your life, and property, and every thing that is valuable is more affected, than that of a jury weighing well the credit due to evidence. If you lightly reject evidence, where is safety to be found? How are you,

or any man, a part of the public, to be protected, if evidence is to be lightly thrown away? The public interest is as much concerned in not lightly rejecting testimony as it is in not lightly receiving testimony.

"Why should they disbelieve what Williams said, when he thought himself dying? What is the hour at which men are most disposed to speak the truth? Look at the motives which induce a statement of falsehood, and consider whether, when that period arrives at which all those motives must cease to operate, the natural love of truth, and the immediate anticipation of going to that tribunal where men will be judged by truth, and where their fate will be fixed by truth, will not produce in their minds a corresponding value for it, at the edge and border of the grave.

"The witness Hodge deposes to Frost's assertion that the soldiers were Chartists. Frost may most likely have said so, though not true. But does it follow that men who are engaged in an attempt to break the law—men who are seeking to stimulate others to hazard their persons in such an attempt—should not endeavour to encourage them by a statement that is not true? If men are engaged in rebellion, is the falsehood of any statement they have made a conclusive reason to show that they never made the statement imputed to them? By no means. If men so engaged wished to encourage their associates, what would be more likely than that a man, professing to have knowledge, should say, 'The soldiers are ready in their barracks; they will join us immediately we appear.' That delusion is constantly practised. I wonder that the uninformed—I wonder that men who engage in these things, are not now satisfied that such statements are not true. The soldiers have ever been found faithful to their allegiance. They are embodied to protect the public peace and the public liberty. Thank God, in our day they have never acted for any other purpose; but it does not therefore follow that this statement should not be made."

The criticisms to impugn Hodge's credit, Sir Thomas Wilde justly characterised as trifling and worthless. "Strong expressions have been used; and if strong expressions could get acquittals for prisoners, my learned friend would be a safe and

admirable counsel. No man can utter them stronger. No man can utter them, as this instance will prove, upon less foundation. There is not the slightest ground upon earth, by any precise moment being fixed, for that criticism, in point of time, which was the sole foundation of the many harsh, strong, and violent remarks that were made. This man says, it was after break of day; the other man with whom he is contrasted says, about break of day, some other time with which it is to be compared; and then the learned counsel puts his own meaning upon these uncertain expressions, giving definite time to that which is uncertain by the evidence, and reasons, not upon the evidence, but upon his own statement. You will not find ground for a single observation that has been made. That the man's testimony should be struggled against, no man can wonder. It is too important not to require a struggle. I hope, where that struggle is well founded, it will prevail; but I hope the country will be allowed the safety and the benefit of the reception of a credible witness's testimony, where it shall appear to be unimpeached. One time, as I understood the observation, it was, that he was home too early; when that was repelled, then it was, that he was home too late; the whole, whether too early or too late, depending, not upon the evidence that is given, but upon a mode of computation which is arbitrary. That he was there is not denied; that he left before the attack upon Newport is clear. Was he there near about the time? Gentlemen, the evidence given to impeach him, in my judgment, confirms him in the strongest degree. The man, you may suppose, as my learned friend justly said, would hasten home when he heard these objects, fearing lest he should be implicated in transactions which would end in death and destruction. He told you he leaped the hedge, and concealed himself among the briars till he could run away safely. Mark what takes place; see the witness who is called to impeach him, Mary Jones; when he arrives at home, he pulls off his clothes, jumps into bed, and his wife takes care to show him to this neighbour, Mary Jones. Is this a contradiction? Had he been home so short a time that his wife, fearful of the events likely to occur, opened the curtains and said to her, 'Here is my old man—thank God,

he is at home.' What was the wife doing?—she was showing at the earliest moment that he was at home. It is a confirmation, not a contradiction: it shows that his acts correspond with all his statements. When he found treason afloat, when he found Newport was to be attacked, he would flee; he would procure evidence of his being at home at the earliest moment; he knew not how soon the treason might begin; he knew not how early it might be important to show that he was far away. Look at the anxious wife taking care to get the evidence of this old woman, who, for aught I know, now supposes she is giving evidence which goes to exculpate him of any guilty project. He stands before you, as I submit, unimpeached; but I pray you to examine his evidence diligently. I have no desire to sustain his testimony, if it ought not to be sustained; if it is not proper you should act upon it, reject it, look cautiously at it, weigh it, and sift it; judge not the prisoner at the bar upon evidence that does not command your faith and your understanding; see if you ought to believe it, if you ought to act upon it; if you do, in the language of the learned counsel, do your duty to your God and your country, and do not reject it without sufficient ground; it is an awful witness; it is a witness that gives a tongue to every part of the transaction, awful and distressing to the utmost, establishing the case if it be true. I therefore implore you to attend to every word the learned counsel addressed to you; watch the evidence as it is read by my Lord: if it be possible for you to discover grounds upon which to reject his testimony, do not receive it. If it correspond with all the facts of the case, if it is unimpeached, you have but one duty to perform. You are unfit for the station you fill; you desert your duty to your country; you violate your consciences; you abandon your duty to your God, which my learned friend calls upon you to perform, if you venture to reject it. You will do your duty; you will do justice to the prisoner, in saying you act not upon doubtful testimony; you will do your duty to the country in giving effect to that which ought to influence your understandings.

"The witness Harford repeats similar declarations. But if you find the same ideas expressed in a somewhat different

manner, the same intentions conveyed and declared at different times to different persons, judge whether that does or does not tend to give any and what degree of confirmation. Suppose they intended, according to the evidence that I have adverted to, to proceed to the town of Newport, and take the town, was it known that there were soldiers in the neighbourhood? Mr. Frost was an inhabitant. My learned friend says 'That if conflict should arise, if contest should occur, nobody could expect that British soldiers with guns in their hands would easily surrender.' What then did Mr. Frost contemplate would be the conduct of the soldiers? Mr. Frost, it is said, is a man of the world, and a man of intelligence. I have no reason to doubt either. What, therefore, must he have expected would be the case upon this body making its appearance at that hour of the night? Could the idea of the soldiers have escaped recollection altogether? No. Is it improbable, then, that Mr. Frost should have mentioned something of his intentions towards them? They were a very small number as compared with the number of the mob.

"Gentlemen, will you judge of the criminal intentions of persons engaged in an insurrection by the probability of their success? If you do, you will judge of a mob by a rule that never was found correct yet. They always imagine—and they would not begin if they did not imagine, though they always imagine wrong, but they never will learn wisdom—they always imagine that they can accomplish more than they can; of course they begin, not with the idea of fastening a halter round their necks, but with the idea that they shall succeed, and by their success escape. With those thousands of men (you will see as I pass on what the number of the soldiers were), was it an unnatural thing that, coming at between one and two o'clock in the morning, they should surprise the poor-house; that the soldiers, not being aware that they were coming, might not be prepared—might be taken by surprise—might be either overcome or murdered before they could put themselves in a condition to defend themselves?

"Are their sayings inconsistent? What conspiracy ever was consistent? You would indeed give the most perfect freedom to conspiracy, rebellion, and treason, if you dis-

believed witnesses coming to prove declarations inconsistent if made at the same time, though not inconsistent when made at different times. They may at first think the soldiers to be Chartists and their friends, and, in the next moment, talk of attacking them in their barracks. But will you give a *carte blanche* to conspirators and traitors by saying, that if witnesses prove inconsistent declarations, they are not to be believed? It is not, Gentlemen, the inconsistency of the witnesses, but of those engaged in transactions, the conduct and management of which must vary from hour to hour according as circumstances arise; and that which a man may contemplate one minute, may the following minute or the next hour be inconsistent with the views that had prevailed arising out of the then existing circumstances.

"Let no man think that, by encouraging such mobs as these, either that which he calls the charter, or any charter, would be obtained. What man at the head of a mob, that obtained power, ever used it honestly, or used it in any other way than to the destruction probably of his own followers, but certainly of the rest of the public; and nothing but anarchy could prevail, until the good sense and good feeling of the country should unite to expel such miscreants from the face of the earth. Talk of the charter being established! No man dreams that any charter could be established. No; the first thing is to destroy the existing government. When such treason and conspiracy exists—I am not saying, Gentlemen, that it existed here—I am presenting the ground for you to say whether it did or did not—but where it does exist, then the result to be anticipated is the destruction of peace, and order, and government; not the re-establishment of any thing which can give peace or security to any man. I say, therefore, the success of such a mob would be the ruin of the individuals who composed it. Those who escaped death—the just punishment of their crimes—would be involved in beggary and distress for the rest of their lives. Such a mob, therefore, are only working their own destruction; their leaders might profit; individuals might, for a short time, flourish out of the ruin which they had produced; but the great body, by whose power they accomplished it,

would become the first sacrifice to those who had misled them. In this case, therefore, the question is not whether I can show an intention that I do not believe existed anywhere, of setting up any form of government—any state of order—it was to destroy the existing government, the law and protection given to every body, taking the chance of what good to individuals might be accomplished for their own purposes out of the general confusion. * * *

"But Harford, Gentlemen, tells you, like the former witnesses, that the statement to him was, that the mail was to be stopped; that that was to be the signal of rebellion in the north, and on the Monday night it was to begin. Then my learned friend says, 'Monday night! why the mail could not arrive till early the next morning.' Is that the way to treat any statement of this sort? Was it hours or minutes they were dealing with? Were they speaking with critical precision, or were they expressing a general intention, the substance of which was this, that if the letters passing through Newport did not arrive at Birmingham at a certain time, some of those wild and violent men, whose conduct we have heard of at Birmingham, would be upon the alert, and would instantly know that, by some accident, the Newport bags, or the other bags, had not arrived? From previous concert, possibly with some of the twenty-seven men who met upon the Friday night, for aught I know, they would have learnt what was the cause of that, and, therefore, would raise the standard of rebellion in the north.

"My learned friend says, 'Evidence I have none; but I beg you to believe that the excitement for Vincent, that the intention to serve Vincent, was the object.' Was it so? Where is the evidence? At what lodge had it been discussed? At what meeting had it been proposed to petition? Where is the place where the excitement existed? It cannot be found. Gentlemen, my learned friend, I said, was unfortunate in his appeals to Providence; he was unfortunate in calling upon you to watch and to see the manner in which falsehood was detected; he did not watch his own case when he made that appeal. Does Mr. Frost know how to procure a relaxation of prison

discipline for Mr. Vincent? Does Mr. Frost know the proper grounds upon which the government can extend mercy, and magistrates indulgence? Does he know that the moment of rebellion, riot, alarm, and confusion, is not the moment when mercy can be extended? He does. Does he know how long agitation for Vincent had lasted, and when it ceased? He does. You are told to account for all this without evidence, upon the ground of agitation for Vincent; dates not given to you; men are asked, you may recollect, respecting conversations months ago; asked generally, without reference to time.

"The learned counsel, doubtless, were not furnished with means, or they would anxiously have sought to lay before you the grounds upon which you might perceive his attempts to restrain the mob. They could furnish none. The excuse, therefore, entirely fails. There is no evidence of agitation at all, or of any human being acting or interfering in reference to Vincent, but Mr. Frost.

"It is said that the mob could not have fired after the soldiers fired, because more lives were not destroyed, or rather, because no lives were destroyed, and more wounds were not inflicted. But, Gentlemen, observe, the ground sloped considerably from the inn; the guns of the mob would be elevated; you know how slight an alteration of the angle will carry the ball above the object; the mob would, no doubt, from the well-directed fire of the soldiers, retire to some distance; and they would not, I dare say, take a very steady aim, not being used to loading their guns very correctly, and not being in a state of very good discipline; that they therefore should not have hit the soldiers is not surprising, but you hear of the shots which are in the ceiling. You will also bear in mind the manner in which the soldiers were arranged; as the windows were low, the soldiers stood along the room in that direction; the shot, therefore, would glance across. It was not, as the argument on the part of the learned counsel supposed, that they were arranged opposite the window.

"Gentlemen, I have but little more to say. I have touched upon Mr. Frost's defence with regard to Vincent; I cannot dwell upon it; I can discover no topics that belong to it that

are of service to him. What else is relied upon? Mr. Frost's character, and some other circumstances. Gentlemen, it is a painful subject to touch upon. He has the character of a peaceable and quiet subject—a character which would make it inconsistent that a man should engage in rebellion. But we, unfortunately, know how views of ambition and pride and impatience lead men to attempt objects illegal and violent, as well as useless. Mr. Frost has proved by a neighbour that he has the character of a generally humane man. I wish not to deprive him of that character. Let it be supposed not that one or two only, but that any number, will say the same of him.

"Was he attending to his business that week? See what part Mr. Frost is shown personally to have taken. If he was engaged in arranging the meeting; if he was engaged in seeing that arms were provided; if he was engaged in communicating with people from a distance, who met from twelve to five o'clock on the Friday, and with the previous arrangements, it is difficult to imagine that his attention was very closely directed to his business. Of that you will judge.

"You are asked also to believe that the circumstance of his wife and family being in Newport at the time, is evidence to show that he did not contemplate making the attempt which is charged. I only say, that when Mr. Frost took that mob into Newport, or proposed to take them into Newport, at two o'clock in the morning, I cannot discover that solicitude for his wife and family which I should have expected to have found; and when riot, tumult, and disorder stalked abroad, Mr. Frost's footsteps were not bent to his home, to that wife and family, but to the wood at Tredegar Park. When the day had passed by, and Mr. Frost is discovered in the evening, he is not at his own house, nor does it appear by any evidence he had been there; he is found at another house. Whatever anxiety, therefore, he is supposed to have entertained for his wife and family, and no doubt did entertain, they do not appear to have operated upon his movements at that time. In the hour of peril and danger he was not with them to succour and comfort and protect them: he was with the mob, which mob he was not restraining, while they were

engaged in acts of mischief. Mr. Frost was apprehended, as I have mentioned to you, at another person's house; it is said he made no resistance. Gentlemen, what his ideas might be of the force that was brought to apprehend him, I know not. Give him the benefit of the circumstance that he did not use *the three loaded pistols* which he had about him. But I think, unfortunately, they speak much more strongly as indicating violent intentions when those pistols were provided, than they speak peaceable intentions when he was apprehended.

"Give him the benefit of no seditious papers being found, but remember his remark: 'You will not find my manuscripts here.' Had he withdrawn his manuscripts from his printer? Where had he disposed of them? What had been his motive for withdrawing those manuscripts? His attention had been called to his papers; he had taken care to leave none there in the possession of his printer. You will judge how far that may tend to render it probable that his papers had been taken care of before he left his house. The fact, however, is, that none were found—none are produced.

"Gentlemen, I hope that I have honestly to the public, not unfairly to the prisoner, discharged my duty. I have only further to say, that the prisoner cannot be convicted unless the evidence is clear and convincing; I heartily hope that you will arrive at a just conclusion upon this evidence, and be enabled to pronounce a verdict consistent with that evidence, which shall do justice to the country and to the prisoner."

Chief Justice Tindal then summed up the evidence with a fullness that omitted nothing of the least importance, and a clearness that left nothing to explain, offering such comments, in the course of his recapitulation, as might assist, but not govern, the decision of the Jury. After explaining the short statute 25 Edward 3., and reading pertinent extracts from the discourse of Sir Michael Foster on High Treason, he introduced a passage from Hale's Pleas of the Crown, which might perhaps offer a suggestion in favour of the prisoner. "If men levy war to break prisons, to deliver one or more particular persons out of prison, wherein they are lawfully imprisoned (unless such as are imprisoned for treason), this,

upon advice of the Judges, upon a special verdict found at the Old Bailey, was ruled not to be high treason, but only a great riot; but if it were to break prisons, or deliver persons generally out of prison, this is treason." So guardedly did the Chief Justice refrain from expressing any opinion of his own, whether or not the insurrection proved aimed at objects of a general or particular nature, that many, from his cautious silence, inferred doubts for which there was no foundation. With his clear analytical mind, he had intended at first to have broken the evidence into parts, and to have placed the different parts as they related to distinct periods of this transaction in juxtaposition together, so as to have presented a clear and intelligible view of the whole of the case; but upon reflection he thought it would be safer to follow the evidence in the course in which it had been given, and to offer such comments as might by possibility be useful. He brought back their minds in conclusion to the exact question they had to determine, whether it was Frost's object, by the terror which bodies of armed men would inspire, to seize and keep possession of the town of Newport, making this a beginning of an extensive rebellion, which would be high treason, or whether he had no more in view than to effect, by the display of physical force, the amelioration of the condition of Vincent and his companions in Monmouth gaol, if not their liberation, which would be a dangerous misdeameanor only. The Jury were to look at the evidence with all possible candour and fairness, and see if the Crown had conclusively disproved this limited object and design.

After this admirable summing up, the model and exemplar of judicial discrimination and impartiality, the Jury retired, and after an absence of half an hour returned into court, at five minutes past six in the evening, with a verdict of Guilty; the foreman adding, "My Lords, we wish to recommend the prisoner to the merciful consideration of the Court." Upon the following day, January the 9th, the Court proceeded with the trial of Zephaniah Williams, which was concluded on the 13th, when the Jury returned the same verdict and recommendation.

The interest was proportionably less, for the evidence

travelled over the same ground without novelty, and the charm of excitement had disappeared. Mr. Thomas, who sought to enlist the sympathies of a jury of farmers by avowing himself a Chartist, and Mr. Rickards, who was complimented by the judges for his able advocacy, defended the prisoner. In length their speeches nearly correspond. Sir F. Pollock spoke for five hours and three quarters; Mr. Kelly five hours and half; Mr. Thomas seven hours; and Mr. Rickards two hours only, bearing in mind, or at least acting on, the wise aphorism of the late Mr. Justice Taunton, that tenuity weakens strength. On the 13th of January the Court proceeded with the trial of William Jones, which was concluded in two days, for all had become exhausted, and the result could not be mistaken. The Jury accompanied their verdict of Guilty with a like recommendation to mercy. Upon this, five of the ringleaders withdrew their former pleas and pleaded Guilty, with an understanding that their sentences should be commuted to transportation for life. With regard to four others less deeply implicated, the Attorney-General consented to a verdict of Not Guilty.

On the 16th of January, Chief Justice Tindal passed sentence of death on John Frost, Zephaniah Williams, and William Jones, in a solemn and pathetic address, persuasive enough to smite the breasts of the most obdurate, and compel an acknowledgment of deserved doom.

"After the most anxious and careful investigation of your respective cases, before juries of great intelligence and almost unexampled patience, you stand at the bar of this court to receive the last sentence of the law for the commission of a crime, which, beyond all others, is the most pernicious in example, and the most injurious in its consequences, to the peace and happiness of human society—the crime of high treason against your Sovereign. You can have no just ground of complaint that your several cases have not met with the most full consideration, both from the Jury and from the Court. But as the jury have, in each of those cases, pronounced you guilty of the crime with which you have been charged, I should be wanting in justice to them if I did not openly declare, that the verdicts which they have found

meet with the entire concurrence of my learned brethren and myself.

"In the case of all ordinary breaches of the law, the mischief of the offence does, for the most part, terminate with the immediate injury sustained by the individual against whom it is levelled. The man who plunders the property, or lifts his hand against the life of his neighbour, does by his guilty act inflict, in that particular instance, and to that extent, a loss or injury on the sufferer or his surviving friends. But they who, by armed numbers, or by violence or terror, endeavour to put down established institutions, and to introduce in their stead a new order of things, open wide the flood-gates of rapine and bloodshed, destroy all security of property and life, and do their utmost to involve a whole nation in anarchy and ruin.

"It has been proved, in your case, that you combined together to lead from the hills, at the dead hour of night, into the town of Newport, many thousands of men, armed, in many instances, with weapons of a dangerous description, in order that they might take possession of the town, and supersede the lawful authority of the Queen, as a preliminary step to a more general insurrection throughout the kingdom.

"It is owing to the interposition of Providence alone that your wicked designs were frustrated. Your followers arrive by daylight, and after firing upon the civil power, and upon the Queen's troops, are, by the firmness of the magistrates, and the cool and determined bravery of a small body of soldiers, defeated and dispersed. What would have been the fate of the peaceful and unoffending inhabitants of that town, if success had attended your rebellious designs, it is impossible to say. The invasion of a foreign foe would, in all probability, have been less destructive to property and life. It is for the crime of high treason, committed under these circumstances, that you are now called upon yourselves to answer; and by the penalty which you are about to suffer, you hold out a warning to all your fellow-subjects, that the law of your country is strong enough to repress and to punish all attempts to alter the established order of things by insurrection and armed force; and that those who are found guilty of such

treasonable attempts must expiate their crime by an ignominious death.

"I therefore most earnestly exhort you to employ the little time that remains to you in preparing for the great change that awaits you, by sincere penitence and by fervent prayer. For, although we do not fail to forward to the proper quarter that recommendation which the jury have intrusted to us, we cannot hold out to you any hope of mercy on this side the grave.

"And now nothing more remains than the duty imposed upon the Court — to all of us a most painful duty — to declare the last sentence of the law, which is that you, John Frost, and you, Zephaniah Williams, and you, William Jones, be taken hence to the place from whence you came, and be thence drawn on a hurdle to the place of execution, and that each of you be there hanged by the neck until you be dead, and that afterwards the head of each of you shall be severed from his body, and the body of each, divided into four quarters, shall be disposed of as Her Majesty shall think fit; and may Almighty God have mercy upon your souls!"

This last portion of the sentence, directing the division of the body into four quarters, is the final remnant of a once barbarous judgment, a hacking and hewing of the corpse, which the pedantry of Lord Coke, and his allusion to the four winds of Heaven, could not justify, and which, even though remitted in practice, ought no longer to mar the feelings of those who pronounce, or wound the ears of those who hear the sentence. There should be no butchery of the dead; when the guilty spirit has once quitted its earthly frame, that should be secure against insult, and sacred from mutilation. To direct the quartering of the dead body is alien to humanity, and deters not, but hardens the hearts of the survivors. The mistake of the Solicitor to the Treasury in delivering the list of witnesses too soon, attributable solely to his own kind intentions, interposed an obstacle to the extreme penalty of the law being carried into effect, of which government gladly availed themselves. After an elaborate argument repeating *in extenso* the discussion at the trial, which for three days occupied the attention of the fifteen judges,

conducted by Sir F. Pollock, Sir W. Follett, and Mr. Kelly on behalf of the prisoners, and by the Attorney-General on the part of the Crown, C. J. Tindal communicated the decision of the judges to the Marquis of Normanby, then Secretary of State for the Home Department, in the following letter:—

"Westminster-hall, 28th January, 1840.

"My Lord,

"I have the honour to inform your Lordship that the argument upon the three cases of The Queen *v.* Frost, The Queen *v.* Williams, and The Queen *v.* Jones, closed this afternoon, and that the judges, after considering the subject, have come to the following determination upon the two questions which have been argued before them, viz.:—

"First, a majority of the judges, in the proportion of nine to six, are of opinion that the delivery of the list of witnesses was not a good delivery in point of law:

"But, secondly, a majority of the judges, in the proportion of nine to six, are of opinion that the objection to the delivery of the list of witnesses was not taken in due time.

"All the judges agreed that if the objection had been made in due time, the effect of it would have been a postponement of the trial, in order to give time for a proper delivery of the list."

In consequence of this difference of opinion, the sentence of death was remitted, upon condition of the three prisoners being transported for the term of their natural lives.

NOTES TO FROST'S TRIAL.

Note 1. Page 2.

On the trial of O'Coigley and others for high treason before Mr. Justice Buller at Maidstone, in 1798, the leading counsel for the prisoner, Mr. Plumer, Mr. Dallas, and Mr. Gurney, declined to interpose when the Crown were exercising their peremptory right of challenge to different jurymen. At length the junior counsel, Mr. W. Scott, jumped up: "I must be chained down to the ground, my lords, before I can sit here, engaged as I am for the life of one of the gentlemen at the bar, and submit to these challenges of the Crown without cause. The Crown has now challenged eleven jurors without cause; a greater number, I

believe, than was ever known before. (In Ireland it is usual to challenge fifty at least.) If I had not been restrained by a reason too mighty for me to oppose, I should have resisted these challenges in the beginning." He was then permitted to argue the point, which he did with great spirit, but at too great length, when Mr. J. Buller interposed with the not very encouraging remark, "In every case that you have quoted, you cannot help seeing a decision against you." The judgment of the Court was of course most prompt and decided. "The true construction of the statute is in favour of the right to challenge, and there is no case, no period, in which a different determination has been made. It appears to me one of the clearest points that can be."

Note 2. Page 13.

The clearest explanation of the statute, if construed literally, is given by Sir J. Scott, when, as Attorney-General, he prosecuted Crossfield for high treason.* "The law has required that the prisoner should have his indictment for a given number of days before he is called upon to plead to it. It *likewise* requires that, at the same time when a copy of the indictment is given to him, a list of the witnesses who are to be produced in order to establish the charge shall be put into his hand." At what time? at the very time the copy of the indictment is given.

Note 3. Page 56.

Direct and concise as the statute of Edward undoubtedly is, there is a Scotch act of treason, passed in the 1st year of James I., still more pithy. "That na man rebell against the Kingis persane. Item, it is statute and ordained that na man openlie and natourlie rebell against the Kingis persane under the paine of forefaulting of life, lands, and gudes." The sentence "brevis esse laboro, obscurus fio" applies, however, to such epigrammatic statutes as these. The question is left open, what is rebellion?—when does a man rebel? It were well if a middle way could be found between the curt brevity of old, and the exuberant tautology of modern, acts of parliament.

Note 4. Page 99.

The names of the judges who divided, nine to six, that it was a good objection, were

Ayes. Littledale, J., Parke, B., Alderson, B., Patteson, J., Williams, J., Coltman, J., Coleridge, J., Erskine, J., and Rolfe, B.

Noes. Lord Denman, C. J., Tindal, C. J., Lord Abinger, C. B., Bosanquet, J., Gurney, B., and Maule, J.

These last decided also that the objection was not taken in time, and Alderson, B., Rolfe, B., and Coltman, J., concurred with them in that opinion. The fifteen judges sit merely as advisers to their brother

* State Trials, vol. xxvi. p. 14.

judges, who reserve a case for their opinion, but their recommendation is in the nature of a command. Forming no court, however, they used to discuss subjects with counsel in a free and easy off-hand manner, of which the following dialogue, reported by those honest chroniclers, Messrs. Carrington and Payne, furnishes a specimen.

Attorney-General. The word "with" in the statute of Anne is used cumulatively.

Lord Abinger. "With" may mean no more than "and."

Attorney-General. The word "but" sometimes means "without," of which the saying "Touch not a cat 'but' a glove"—meaning "without a glove," is an example.

On Sir Frederick Pollock saying that judges do not now take those liberties with acts of parliament which they did more than one hundred years ago, Lord Abinger remarked, "One reason for that is, that more than one hundred years ago acts of parliament were very short, and were to be applied to a variety of cases; but now they are very long, and some of them are framed with all the beauties of style to be gathered from the office of the special pleader, and the office of the conveyancer also." (Carrington & Payne, vol. ix. page 129.)

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THE TRIAL

OF

EDWARD OXFORD

FOR SHOOTING AT THE QUEEN,

AT THE CENTRAL CRIMINAL COURT,

On Thursday, Friday, and Saturday, July 9, 10, 11, 1840.

BEFORE LORD DENMAN, BARON ALDERSON, AND JUSTICE MAULE.

Counsel for the Crown: The Attorney-General, Sir J. *Campbell*, Solicitor-General, Sir Thomas *Wilde*, Sir Frederick *Pollock*, Mr. *Wightman*, Mr. *Adolphus*, and Mr. *Gurney*.

Counsel for the Prisoner: Mr. Sydney *Taylor* and Mr. *Bodkin*.

INTRODUCTION.

In our earlier domestic annals, the crowned head appears to have been exposed to danger from cabals of traitors, eager for a change of dynasty; from subtle Jesuits trying different kinds of death to purify the throne from the usurpation of a heretic; from desperate fanatics hired to assassinate the hero of the revolution, earnest for civil war, and thirsting for revenge. The life of the good Queen Bess was attempted by poisoning her side-saddle, her letters, and perfumes; the merry Charles could scarcely waken from his revels at Whitehall without hearing of Rye House plots, that he was to be set upon and slain on his road to Newmarket, or in St. James's Park, by the bravoes of the Duke of Buckingham, or some Fifth Monarchy men; the stern Prince of Orange read with unmoved countenance those intercepted despatches from St. Germain's which told of relays of conspirators, the *tricenti juravimus*, who had sworn on each sacred Jacobite

relic to take his life. None but chartered fools fluttered about the court, and these were harmless. Other generations succeeded, but little disturbed by intestine commotion: the wailing cry for royal blood, of 'killing no murder,' died away, and the two first kings of the House of Brunswick experienced no other danger than from the fire of open enemies on the field of battle. It was the more painful lot of George the Third to be the mark at which poor maniacs, silly women, discharged soldiers with gun-shot wounds in their heads, mad lieutenants, Peg Nicholson, Hatfield, Lieutenant Curtis, tried the knife or pistol. The humanity of the age and kind-heartedness of the sovereign would not permit a hair of their heads to be touched. In two of the cases not even the form of trial was gone through, the stamp of frenzy being too plainly marked on the patients. In the single instance of Hatfield, that was submitted to a jury, it scarcely required the mature eloquence of Erskine to guard the jurors against being led away by the violence of their own loyalty. Lord Kenyon interposed to snatch from the possibility of danger the wretched victim of mental disease. Shielded from punishment by his undoubted malady, Hatfield was consigned to Bedlam, and died there in January, 1841, at the good old age of sixty-eight, having survived his outbreak of frenzy nearly forty years.

How noble a contrast does the treatment of Hatfield present to the refinement of cruelty with which Damien was tortured half a century before, in what the French deem the centre of civilisation. Both attempted to assassinate the reigning monarch, coerced by the maddening influence of disease. Yet in the one case the inventive cruelty of hate was exhausted to protract life under suffering, with an ingenuity worthy of fiends or savages, and to kill by inches at last; in the other gentle nurture and soothing care tended to a good old age the unconscious criminal, whom an inscrutable Providence had already sufficiently afflicted. Each generation becomes more truly Christian, and is wiser than the preceding, by becoming more humane.

The hard fate of George the Third seemed revived in his royal niece. It was her peculiar misfortune that, succeeding

to the throne at seventeen, and exciting universal interest, she should have attracted the notice of all, even the most insignificant, and have been exposed, in her hours of exercise and recreation, to the attacks of half-witted miscreants, seeking to administer to their own diseased desire of notoriety by firing at, or pretending to fire at, the Queen. It was 'grandeur upon earth,' in the language of Peter Peebles, to these crazed knaves and imbecile monomaniacs to have their ignoble names shouted forth, and printed in capitals on the walls, to be pointed at "*digito monstrarier hic est;*" to see their portraits in the newspapers; to have their sayings and doings chronicled; and then, after solemn interviews with titled grandees in Newgate, to be the heroes of a state trial, with all its pompous ceremonial, and to behold in stately prospect the awful exaltation of a traitor. So dazzled were they by the glare, that Queen Victoria, in the first years of her reign, might as reasonably dread the maniac, as Queen Elizabeth did the Jesuit traitor.

Oxford, a drivelling dreamer, of bad heart and ill-regulated understanding, led the way, and his escape, whether wisely or rashly accorded, tempted several candidates for infamy, not arrived, or ever likely to arrive, at years of discretion, to feed their love of mischief at the flame of public notice; and each, in succession, with servile imitation, to snap his pistol at royalty. In May, 1842, John Francis, a youth of nineteen, again fired at the Queen on Constitution Hill. No bullet could be found, as the pistol was fired towards a vacant space, nor could the purchase of any be proved, but the sharp whizzing report gave token that it had been loaded with a pebble or some destructive substance: and the jury very properly convicted him on the second count of the indictment, on which the poor creature sobbed piteously. His life was spared after two consultations had been held by the cabinet, in contemptuous clemency to the offender, and respect to the humane feelings of the sovereign, on condition of transportation for life. Scarcely had the reprieve been granted, when a deformed stripling, William Bean, crooked in mind as in body, only seventeen, again presented his pistol at Her Majesty, when going to the Chapel Royal. It was

only loaded with powder and wadding, for he had sufficient cunning not to put his life in peril. He was sentenced to two years' imprisonment for the misdemeanour, and Lord Abinger shrewdly remarked that whipping at the cart's tail should be the fitting sentence in future.

The nuisance had become a national disgrace, and intolerable; some shameful punishment, suited to the character and condition of such intrusive poltroons, was required: and Sir Robert Peel proposed a measure better adapted to the offence than the high-sounding but ineffectual charge of high treason, or attempt at treason. Under his auspices was passed the salutary statute, 5 & 6 Vict. c. 51, intituled, "An Act for the further Security and Protection of Her Majesty's Person," and enacting, in the most comprehensive terms, that "whosoever shall point any description of fire-arms at the Queen, whether the same shall or shall not contain any explosive or destructive material, shall be guilty of a high misdemeanour, and liable to the same penalties as in convictions for simple larceny, and, in addition, shall be publicly or privately whipped, as often, and in such manner, as the Court shall direct, not exceeding thrice." The bill was passed with unanimous assent; and Lord John Russell remarked pointedly that, "as the offence to be punished was the offence of base and degraded beings, a base and degrading punishment was most fitly applied to it." This very useful measure saved the royal person from further insult, for the half attempt at discharging a pistol of the wretched pauper last year can scarcely be deemed an exception, and reads a salutary lesson to those reformers of our criminal jurisprudence who would push their merciful theories to excess.

It had long been a favourite doctrine with the lovers of humanity, to abolish flogging altogether; that the lash should be reserved for brute beasts, and be no longer abused as an instrument of degradation to fellow men; a wise and humane proposition, certainly, as a general rule, but not of universal application. This sharp corrective dispelled the wild notion of increased consequence which such gallant exploits aimed at, reduced the whipped offender even below his former degraded level, and taught the morbidly aspiring juvenile to

dread the rod. This handful of pismires being stifled, the Queen could go freely amongst her people, and not even the gliding shadow of suspicion of danger cross her path. No King or Queen has travelled more, and in every portion of her dominions there has been displayed the same beaming loyalty; no hand has been raised, but in token of rejoicing homage. Tell it out in the streets of Paris, publish it at Vienna, that at the very time when the Emperor of Austria was a fugitive from his capital, and the King of the French an exile, the Queen of England slept at an inn at Crewe, close by a railway station, without troops or guards, surrounded by thousands of the working class, but as free from apprehension or danger as if she had reposed in her royal palace at Windsor. The loyalty of a whole people at once explains this entire confidence; but the effect is not remotely derived from the merciful administration of wise laws, and the successful effort of the legislature to crush a pestilent mischief; the crime of a few insignificant boys, but in its consequences tainting a great nation.

How far the verdict in Oxford's case was strictly correct, whether he ought to have been held irresponsible for his act, is a problem most difficult to solve; but which, if pressed to the rigour of the law, should, perhaps, be decided in the negative. The jury were probably influenced in their final decision by the grave doubts whether the pistols had been really loaded with bullets, — whether the Queen's life had ever been really exposed to danger? They might prudently resolve in consequence that the life of the prisoner should be safe from danger, but that he should be shut up from the possibility of playing such tricks in future. He was too guilty to escape scatheless, not guilty enough to suffer death. But the medical evidence in his favour appears, at least to a lawyer's mind, to deserve grave inculpation. The doctrine of moral insanity, manifesting the disorder in the feelings, passions, and temper, during which the intellectual faculties seem to sustain little or no injury, is a doctrine fraught with danger to society, and, however petted by physicians, can scarcely be allowed to gain permanent admittance into our courts of justice. According to the highest medical authorities on the Continent, Pinel, Marc, Esquirol, supported by authors

of great repute in England, Drs. Prichard, Haslam, and Conolly, this morbid perversion of the natural affections, breaking the temper, darkening the moral disposition, distorting the natural impulses, may exist without any lesion of the understanding, without any insane illusion or hallucination, and yet so thoroughly control the patient as to prevent him being a free agent, or being held accountable for his actions. They admit that there is no incoherence, that the association of ideas is perverted, not confounded, that this patho-maniac is insane in his overwhelming passions only, and can follow correctly his own train of thought. "The perverted state of the moral feelings," says Monsieur Esquirol, "is so constant that it appears to me the proper characteristic of mental derangement. There are madmen in whom it is difficult to discover any trace of hallucination, but none in whom the passions and moral affections are not disordered, perverted, or destroyed. I have in this particular met with no exception." This moral insanity will sometimes visibly change the whole outward and inner man. Where the affections have been sensibly alienated, and the entire disposition altered, where the gentle, the caressing, the cheerful, the confiding has become gradually *sensim sine sensu*, harsh, violent, suspicious and morose; where the grey twilight of melancholy has, without any real cause, overcast the whole horizon, and silent moodiness betrays itself to those who were most dear, moral madness may be presumed. But in such a case intellectual madness has supervened; causeless gloom could not exist without some lesion of the understanding; and estrangement from beloved relatives, in the absence of all reason for estrangement, could not arise without some flaw in the reasoning faculties. The transformation of mind and body proves the deadly working of mental disease.

But the chief danger and difficulty present themselves where there has been no perceptible change, only intense malevolence from the first. Oxford from a child was wayward, fractious, good for nothing, devoid of natural sympathies or affection, cruel, fond of giving pain, and pleased with the spectacle of suffering. If, indeed, such conduct be no more than lesion of the will, moral insanity exemplifying its com-

plete control by the perpetration of flagitious acts, if those who fling themselves headlong into the vortex of the passions, to work all manner of 'uncleanness with greediness,' are to be deemed irresponsible—fit objects for Bedlam, but not for punishment,—our gaols should be thinned and lunatic asylums multiplied. But it is the duty of a Christian and a rational being to keep down these unruly passions; and the physician who contends that man has no free will and cannot control his ungovernable appetites, seems as unsound in his theology, as erroneous in his law. The reader of his Bible dare not admit that intense malevolence alone, even without ground or provocation, actual or supposed, is of itself an unfailing proof of insanity, or that a man is mad merely because he is desperately wicked. Reason and religion teach us to reject the modern medical code, fashionable and favourable to our corrupt nature though it be, that all are insane into whom, to judge from their deeds, Satan has entered; that the more terrible the crime, if perpetrated without apparent motive, the more conclusive is the existence of the malady. To such paradoxes the law of England cannot venture to listen. The law cannot tolerate the doctrine, of making the crime itself proof of irresponsibility, without inflicting the greatest individual injustice, and undermining the safeguards of society, without proclaiming practical immunity to such wretched beings as Greenacre, Gleeson Wilson, and Manning; to all, in short, who may show 'the mind diseased' by inflicting horrors in the newest shape, and inventing fresh modes of ghastly murder. But without sanctioning such extravagant and perilous whimsies, it must be confessed that Oxford's case presents no slight evidence of diseased weakness of mind, as well as diseased irregularity of the passions. His reasoning powers, the faculties of thought and judgment, appear to have been feeble and inert; the youth of seventeen seems scarcely to have advanced in ratiocination beyond the child of nine years of age. His silly reveries, "full of such stuff—As dreams are made of," his ambitious rhapsody of becoming Admiral Sir Edward Oxford without counting the preparatory steps—he would be made an Admiral without going to sea,—his determination to become famous without considering how the wish was to be accomplished, argue the presence of

a feeble and deluded imagination, and no judgment. Sir John Nicholls' test of insanity, the substitution of fancies for realities, applies forcibly to his case. He cheated himself with the notion that he should become a hero, by pretending to be an assassin, at no personal risk. It may be justly contended that this pretence of an unsound mind forms no legal ground for exculpation, as the act was not the necessary consequence of the malady. He knew that his act was illegal, but from a mischievous spirit he chose to commit it; and if a free agent, if he knew that he was violating the law of his country, that law deems him a fit object for punishment. This conclusion, it cannot be denied, partakes of the *summum jus*,

"And right, too rigid, hardens into wrong."

It should be remembered that the taint of insanity is hereditary; that both the grandfather and father of Oxford, though not permanently mad, had been confined in strait waistcoats; that his mother, during her confinement of her two sons, had been brutally assaulted by Oxford the father, and been put in mortal terror. Her eldest son had been born an idiot, in consequence of panic; and though the younger could not be considered idiotic, he was so imbecile as to take a childish delight in mischief. He fired in the fancy that he was performing an exploit, just as some mischievous urchin would thrust his lucifer-match into a hay-stack that he might enjoy the blaze. The law might, but would scarcely condescend to, look down upon such a poor creature as a responsible being.

Most of Lord Hale's notions with regard to insanity are virtually overruled; but if his definition, that the intellect of a responsible agent should be that of a boy of fourteen, still holds good, Oxford may be held entitled to acquittal. His capacity seems to have been far too feeble to make him sensible of the moral quality of his act, and too obtuse to excite more than a modified consciousness of doing wrong. There was a faint probability that he had not sufficient free will to make him accountable for his acts—a strong probability that his childish intellect had not taught him the extent of his crime—a moral certainty that he had no motive but to accomplish something that, without any real courage

or exertion, would make him talked of, and elevate him into a corner of the *Dispatch!* It was well that such a degraded being should be shut up for ever from the possibility of attempting further mischief,—a matter of exultation and pride that the Queen's gentle nature should not be pained by feeling it an act of duty to sign his death-warrant.

The trial commenced with all the simplicity of a charge of felony, and the Attorney-General congratulated the jury that there had not been a single challenge on the part of the Crown or the prisoner. He was indicted on the statute of Edward 3., according to the form regulated by the act 39 & 40 Geo. c. 93., for high treason in its most aggravated form—a direct attempt on the life of the Queen. The effect of the act was, that where there was a trial for high treason, the overt act being a direct attempt on the life of the sovereign, the trial should be conducted as in cases of murder. The object of the statute was to give to the life of the sovereign the same protection that was afforded to the meanest subject. It dispensed with proof of the overt act by two witnesses, and a number of forms that were only salutary where the charge assumed a political aspect, when the prosecutor might be supposed to have an interest in bringing home conviction. There were two questions: "Whether, supposing the prisoner accountable for his actions, he was guilty of the offence? and, secondly, whether at the time he was accountable to the law?

"The Queen, since her union with Prince Albert, had been accustomed to take an airing in the parks in the afternoon or evening, without a military escort, and with the simplicity of private life—a custom well known to all her subjects. On the evening of June 9th, curiosity and loyalty had led many to the spot, expecting the approach of the Queen. About six o'clock Her Majesty, accompanied by her royal consort, left the palace in a low open carriage, with four horses and two outriders. She was seated on the left. Her carriage drove up Constitution Hill. About one hundred and twenty yards in advance, or one third the distance between the Palace and the Triumphal Arch at Hyde Park corner, was the prisoner, Edward Oxford, walking backwards and

forwards, with his arms under the lappels of his coat. He was on the right-hand side of the road, opposite the iron railing which divides the road from the Green Park. When the carriage approached, he turned round, nodded his head, then drew a pistol from his breast, and, as the carriage was nearly opposite him, he discharged the pistol. The Providence of God averted that blow from Her Majesty. The ball whizzed by on the opposite side, and, in all probability Her Majesty was quite unconscious at the moment that any attempt had been made upon her life. The carriage proceeded. The prisoner then looked back, as if to see whether any person was standing near enough to see him, and drew another pistol, but whether with his right or left hand, seems uncertain. He aimed it at Her Majesty. It would appear that the Queen saw him take aim, for she stooped down. Again the Providence of God preserved her from injury. The prisoner fired. The ball was heard to whiz along, but it missed its object. The Queen immediately drove on, to allay any alarm that might arise in the breast of her august mother."

After relating the arrest of the prisoner, as afterwards proved, the Attorney-General proceeded in a calm and even tone, but with remarkable clearness and precision, to discuss the presumptions of guilt or innocence of the prisoner.

"I must tell you, Gentlemen, that the balls, after search had been made, could not be found. But I think nobody can entertain the slightest doubt that these pistols were loaded with ball. I understand that there were two marks on the wall discovered immediately afterwards, which some persons conceived must have been made with the balls fired from the pistols. I shall lay that evidence before you, but I acknowledge in my own mind that it is not entitled to much weight. It seems to me much more probable that the balls went over the wall, and to a distance within the gardens. The wall was only four or five feet higher than the top of the carriage. Oxford was not an unskilful shot with pistols, and the probability is that in the flurry which he must have laboured under, and which any one must have laboured under at such a moment, he aimed the pistols in such a manner that the balls went over the wall into the garden. But, found

or not, can there be the smallest doubt that these pistols were loaded with ball. He purchased bullets: he had them at his lodgings. There was a mould for casting bullets found in his box. He had been firing at a target and practising in a shooting-gallery; and at the time, whatever he may have said since, after voluntarily inquiring whether the Queen was hurt, in answer to a question put to him he said, 'that the pistols were loaded with ball.' Was he accountable for his actions? Did he know the consequences of what he did, or did he labour under some delusion and was insensible of committing any crime? Could he distinguish between right and wrong? In former times it was said that by the law of England, no plea of insanity could be set up when there was an overt act of treason, and an attempt on the life of the sovereign. That law was repealed by an act passed in the reign of Henry VIII., and, according to the dictates of reason, justice, and humanity, a man was now not considered a fit object for punishment who was not conscious of what he was doing. According to the law of England, if you wish to establish an exemption from responsibility on a criminal charge, there must be even a greater degree of aberration of mind proved than would be necessary to annul a civil contract, or prevent a person from having the management of his own affairs. In criminal proceedings it must be proved that the insanity existed at the time, and that it was connected with the offence committed."

The Attorney-General cited from Alison the principle, that if, although somewhat deranged, the accused is able to discover right from wrong, in that case he is liable to the full punishment for his offence.

"For the honour of our country and our common nature, I wish it could be shown that the prisoner was beside himself when he dared to level a pistol at the head of Her Majesty, the young and gentle lady, who, seated by the side of her consort, required no guards, but placed full reliance in the loyal affection of her subjects,—I wish he were insane. But I cannot shrink from the declaration of my opinion that I see no reason for that belief. Suppose on that Wednesday, June 10th, the prisoner had entered into a contract, would it not have been valid? Suppose he had exercised the elective

franchise on that day, would his vote have been disputed? Suppose he had made a will that morning and died immediately afterwards, could that will have been contested? You must say whether at the time this act was done the prisoner was accountable for his actions. If his will would have stood good, if his contracts would have been binding, if he could have been entrusted with the management of his affairs as a reasonable being, *à fortiori* as a criminal he was responsible."

The prisoner could not in reality have exercised either of the Attorney-General's suggested tests, giving his vote or making his will, for he was under nineteen years of age; but the tests were properly submitted to guide the judgment of the jurors during the inquiry. Oxford had stepped into the dock with a jaunty air and a flickering smile on his countenance, had glanced at the galleries as if to ascertain whether he had a large concourse of spectators, and leaning with his elbow on the ledge of the dock, commenced playing with the herbs that were placed there before him. He kept his gaze earnestly fixed on the Attorney-General during the whole of his address, twirling the rue about in his fingers, and became more subdued in manner toward the close of the speech. The facts lay in a small compass and were clearly proved.

Samuel Perks, a builder, was standing waiting for the approach of the Queen. "I saw Her Majesty come out of the wooden gate of the north wing, the garden gate, in a low open carriage, accompanied by Prince Albert. The carriage turned to the left up Constitution Hill. There was a postilion and four horses. The top of the carriage reached even with my forehead; it was a low open one with four wheels. I was on the left-hand side of the carriage. There were no military in attendance on the carriage. There were four out-riders, two a little in advance and the others a distance behind. I saw Oxford on the right side of the carriage, on the footpath next the iron railing on the off side. He was walking along very slowly, with his arms folded under his breast, and his coat buttoned: he was in advance of the carriage. The prisoner gave a nod with his head when the carriage came on; he turned round and gave a nod with his head in the direction of the carriage. From the singular way he nodded with his

head previous to the advance of the carriage, it attracted my attention. When the carriage had advanced, I ran in the direction of it, and the prisoner drew a pistol with his right hand from his left breast pocket, presented it at *their* Majesties, and fired. The prisoner was about five or six yards from the carriage when he discharged the pistol. The report of the pistol attracted my attention and I had a distinct whizzing or buzzing before my eyes, between my face and the carriage. The moment he fired the pistol, he turned himself round as if to see if any one was behind him; he then set himself back again, drew a second pistol with his left hand from his right breast, presented it across the one he had already fired, and which he had in his right hand, and fired again, at both times taking very deliberate aim. The carriage was then about three or four yards in advance of where he fired the first. After the second pistol was fired, the two witnesses named Lowe immediately ran up; Joshua seized hold of the prisoner by the two arms, and Albert Lowe caught hold of the two pistols, and wrenched them from the hands of the prisoner. A man named Clayton came behind Albert Lowe, and seeing the pistols in his hands, thought he was the person who committed the act, and said to him, 'You confounded scoundrel' I think were the words, and wrenched one of the pistols from Lowe, upon which the prisoner exclaimed, 'It was me, I did it.' The carriage proceeded. We took the prisoner along the road, and delivered him into the hands of two policemen."

Cross-examined by Mr. Sydney Taylor. The path-way is very little elevated from the carriage road. I suppose the foot-path is about the height of the centre of the road.

Court. Prince Albert was nearest to the prisoner. The top of my head was about level with the top of the back of the carriage.

Joshua Lowe, a spectacle-maker, took up the narrative. "I heard the report of fire-arms and saw the smoke ascend, and seized the prisoner. I said to my nephew, 'Look out, Albert, I dare say he has some friends.' The prisoner turned round and said, 'You are right, I have.' There was a general rush. I was on the left-hand side. The garden wall of the palace is on that side. It is not very high, about eight

feet, or more than that. The muzzle of the pistol would be within little more than two yards of the carriage. He appeared to take a deliberate aim. The railing is quite open, so as to afford an opportunity for a person to fire from the park side if he had chosen. Albert Lowe did not see the prisoner fire the first pistol, but when he fired the last, he was about five yards from the carriage, I should think!"

Elizabeth Stokeley, housekeeper to Lord Bexley, "saw the flash of the pistol come almost immediately over the Queen's head: the Queen was crouching. It was the second flash which appeared to come over the Queen's head, and it came close past me, the flash did. It seemed something that whizzed past my ear; as I stood, it seemed like something quick passing my ear, but what I could not say. At the time the second pistol was fired, I was very near to the Queen's carriage, within a yard."

William Clayton, a cabinet-maker, heard a pistol fired, and gave his evidence in a tone of great self-importance. "I ran and came abreast of the horses. I heard a second report. The horses stopped, and Her *Majesty arose in the carriage and looked round, with no fear on her countenance neither.* I seized Albert Lowe: I said, 'You confounded rascal, how dare you shoot at our Queen?' I spoke in a loud voice. The prisoner said, 'I did it, I give myself up; I will go quietly.' I took hold of his coat; the mob rushed in, and seized me, and knocked the pistol out of my hand on the ground. The police took me to the station-house, where I was locked up in a cell and searched. When I was brought from the cell I saw the prisoner in the inspector's office: he turned round and said, 'Is the Queen hurt?' I said to him, 'What did you put in the barrels?' He said, 'I have answered a dozen questions; there have been a dozen persons asking me questions, and I shall answer no more.' I should say the second pistol was fired the distance of full eight or ten yards from the carriage."

Charles Brown, a policeman, continued the history. "On my coming up several voices said, 'This is the man, and I laid hold of him. The prisoner said, 'You have no occasion to use violence. I am the person; I will go quietly.' I proceeded with him to the station-house. Shortly afterwards some

person remarked, 'Perhaps there might be more of them; I wonder whether there was any ball in the pistols or no.' The prisoner made answer, 'If the ball had come in contact with your head, if it was between the carriage, you would have known it.'

This witness prevaricated a good deal as to the very words used when pressed by Mr. Taylor.

You say he stated there were balls in the pistols: what were his words?—As near as I can recollect his words were, "The pistols were loaded."

He did not say there were balls in them, but the pistol were loaded?—There were balls in the pistols.

"The pistols were loaded," were those his words?—No, not exactly; he distinctly said there were balls in the pistols.

He said "They were loaded;" were those his words?—"The pistols were loaded with balls," those were the words as near as I can judge. I will not swear to the exact words. I cannot tell the exact height of the wall of the garden. I should say it was eighteen or twenty feet high. The people were talking as to whether there were balls: one said, 'I wonder whether there was one,' and he said 'There was.'"

William Smith, a policeman, saw the prisoner present the second pistol, and fire it: he was ten or twelve yards from the carriage when he fired it.

Frederick Garrett proved the purchase by the prisoner of a pair of pistols and a powder-flask. "These are the pistols that were parted with to the prisoner. I asked him two guineas for them. He said he wanted to know what distance they would carry. I said about twenty or thirty yards. He said if I would take two sovereigns he would have them, and I sold them to him."

John Joseph Gray proved a further purchase. "I remember the prisoner calling at our shop on either Tuesday or Wednesday, the 3d of June last. He bought half a hundred caps of me. He asked if I kept bullets. I told him no, but recommended him to a gunsmith in the Borough. I had been to school with him, but for how long I cannot say; to the best of my recollection, it was eight or nine years ago. When he came into the shop I feigned not to know him. He asked me if my name was not John Gray. I told him it was. 'Well,'

he said, 'don't you remember any one of the name of Oxford?' I said, 'Yes, I certainly do; I went to school with a person of that name.' He said, 'Well, I am the same.' I asked him what he had been doing with himself. He said he had lately come from Birmingham, but he had been in the public line.

Court. You say you feigned not to know him when he came in; what was your reason for that?—I did not wish to make up the acquaintance again with him. I did not observe any thing odd in his appearance, not the least.

Sir Henry Wheatley spoke to the prisoner's demeanour immediately after the act. "I am keeper of Her Majesty's privy purse. I saw the prisoner in the cell. He came forward when the door was opened, and asked me 'Is the Queen hurt?' Those were the first words that were spoken. We asked him in what situation he was. He stated he was a barboy, and had been out of place about ten days."

The Earl of Uxbridge, who had accompanied Sir H. Wheatley, spoke with more particularity. "The prisoner, from the opening of the cell-door where I found him, addressed me by saying, 'Is the Queen hurt?' I said, 'How dare you ask such a question?' He said he had been shooting a great deal lately,—a very good shot with a pistol, but a better shot with a rifle. I then said to him, 'You have now fulfilled your engagement.' He replied, 'No I have not.' I said, 'You have, Sir, as far as the attempt goes.' To that he was silent."

Samuel Taylor proved that one of the pistols had been loaded shortly before. "I am acquainted with the prisoner. I have known him about twelve months. I recollect the rumour of the Queen being fired at. I saw the prisoner the evening before that; he showed me a pistol, and said he had been firing at a target. I asked whether it was loaded, he replied that it was loaded."

Thomas Greenwood Lawrence heard the prisoner boast he had lost a half sovereign on a bet respecting the shot at the bull's-eye, at the shooting gallery in Leicester Square. "He showed me a flattened ball. I heard a person named Roach remark that he was more fit to shoot at a hay-stack than at a target."

The Hon. John Oliver Murray saw the shot, and immediately afterwards looked at the wall. "I was the first person that went to the wall. I noticed a mark, which I supposed to be the mark of the bullet: it was a white mark on the dark wall, as large as the palm of my hand; the mark was about five feet from the ground, and rather in a slanting direction from where the prisoner stood."

The Hon. William Owen Stanley confirmed his conjecture. "I have had frequent experience in the mark that a ball would make going against a wall. I saw a mark which in my opinion was decidedly such as might have been made by a bullet. I could see the part where the bullet had struck, and a chipped brick which had broken off about an inch and a half where the bullet struck; it appeared to be circular. I examined other parts of the wall, and there appeared to me to be another mark about fourteen yards from that, not quite a similar mark. It appeared to me to be fresh, and such a mark as might have been caused by a bullet. I looked down on the ground close to the marks, but found no bullet there: there were three little chimney-sweepers there. It appeared to me to have been an angular strike. I have no doubt whatever in my own mind, that it was produced by a bullet fired from a pistol."

Samuel Hughes, an inspector of the metropolitan police, found in the prisoner's box this sword and scabbard [*producing them*], a black crape cap with two red bows, a powder flask containing about three ounces of gunpowder, a bullet mould, five bullets, and twelve or fourteen percussion caps [*producing the articles*]. The bullets that were cast by that mould fitted the pistols. [*He then produced papers and letters found in the prisoner's box.*] He said he intended to have destroyed them in the morning, before he went out, but he had forgotten them. The papers were folded up in the pocket-book as they are now: the three letters were folded up as letters." These documents were then put in and read.

YOUNG ENGLAND.

RULES AND REGULATIONS.

"1. That every member shall be provided with a brace of

pistols, a sword, a rifle, and a dagger; the two latter to be kept at the committee-room.

" 2. That every member must on entering, take the oath of allegiance, to be true to the cause he has joined.

" 3. That every member must, on entering the house, give a signal to the sentry.

" 4. That every officer shall have a *factitious* name; his right name and address to be kept with the secretary.

" 5. That every member shall, when he is ordered to meet, be armed with a brace of pistols (loaded) and a sword, to repel any attack; and also be provided with a black crape cap, to cover his face, with his marks of distinction outside.

" 6. That, whenever any member wishes to introduce any new member, he must give satisfactory accounts of him to their superiors, and from thence to the council.

" 7. Any member who can procure an hundred men, shall be promoted to the rank of captain.

" 8. Any member holding communications with any country agents, must instantly forward the intelligence to the secretary.

" 9. That whenever any member is ordered down the country, or abroad, he must take various disguises with him, as the labourer, the mechanic, and the gentleman; all of which he can obtain at the committee-room.

" 10. That any member wishing to absent himself for more than one month, must obtain leave from the commander-in-chief.

" 11. That no member will be allowed to speak during any debate, nor allowed to ask more than two questions.

" All the printed rules kept at the committee-room."

" List of principal members. — *Factitious* Names.

President. — GOWRIE.

Council.

JUSTINIAN	ERNEST
ALOWAN	AUGUSTIA
COLOMAN	ETHELRED
KENNETH	FERDINAND
GODFREY	NICHOLAS
HANIBAL	GREGORY.

Generals.

FREDENI	OTHOE
AUGUSTUS	ANTHONY.

Captains.

OXONIAN	LOUIS
MILDON	AMADEUS

Lieutenants.

HERCULES	MARS
NEPTUNE	ALBERT

Marks of Distinction.

Council.—A large white cockade.
President.—A black bow.
General.—Three red bows.
Captain.—Two red bows.
Lieutenant.—One red bow.

"A. W. SMITH, Secretary."

"Young England.—Dated May 16, 1839.

"SIR,—Our Commander-in-Chief was very glad to find that you answered his questions in such a straightforward manner. You will be wanted to attend on the 21st of this month, as we expect one of the country agents to town on business of importance. Be sure and attend.

"A. W. SMITH, Secretary.

"P.S. You must not take any notice to the boy, nor ask him any questions.

"Addressed, Mr. Oxford, at Mr. Minton's,
High-street, Marylebone."

"Young England.—Nov. 14, 1839.

"SIR,—I am very glad to hear that you improve so much in your speeches. Your speech the last time you were here, was beautiful. There was another one introduced last night, by Lieutenant Mars; a fine, tall, gentlemanly-looking fellow; and it is said that he is a military officer, but his name has not yet transpired. Soon after he was introduced, we were alarmed by a violent knocking at the door. In an instant our faces were covered, we cocked our pistols, and with drawn swords stood waiting to receive the enemy. While one stood over the fire with the papers, another stood with lighted torch to fire the house. We then sent the old woman to open the door, and it proved to be some little boys who knocked at the door, and ran away.

"You must attend on Wednesday next.

"A. W. SMITH, Secretary.

"Addressed, Mr. Oxford, at Mr. Parr's,
Hat and Feathers, Goswell-street."

"Young England.—3rd of April, 1840.

"SIR,—You are requested to attend to-night, as there is an extraordinary meeting to be holden in consequence of having received some communications of an important nature from Hanover. You must attend, and if your master will not give you leave, you must come in defiance of him.

"A. W. SMITH, Secretary.

"Addressed, Mr. Oxford, at Mr. Robinson's,
Hog-in-the-Pound, Oxford-street."

Tierney, a police serjeant, measured the wall on Constitution Hill. "The height from the foot of the wall is nine feet four inches; it is twenty-two yards from the wall to the railing opposite, in rather a slanting direction."

Court. The foot of the wall is lower than the road? It would make about a foot difference; that would be about eight feet four inches from the road. I saw a mark on the wall, that is exactly six feet from the foot of the wall, or about five above the level of the road.

The Hon. Fox Maule, Under-Secretary of State for the Home Department, produced the prisoner's statement before the Privy Council:

"A great many witnesses against me. Some say I shot with my left, others with my right. They vary as to the distance. After I fired the first pistol, Prince Albert got up, as if he would jump out of the coach, and sat down again as if he thought better of it. Then I fired the second pistol. This is all I shall say at present.

(Signed) "EDWARD OXFORD."

This statement, sensible enough, but tinged with a mischievous pleasantry, as if he enjoyed the fun of the panic his firing had caused, closed the case for the prosecution.

Mr. Sydney Taylor then addressed the jury for the defence, with calm good sense and sound solid reasoning, but with little of that impassioned tone of appeal to the feelings, and rhetorical artifices, which is expected in general from the Irish school of eloquence. Mr. Taylor was favourably known by his articles in the *Morning Herald* to mitigate the horrors of the penal code, and was rising into eminence on the Norfolk Circuit, when a premature death shortly after his suc-

cessful defence of Oxford, cut him off in the midst of an honourable career. He put the favourable points of his client's case in a clear steady light, but let off no fire-works, and trusted to good sense more than rhetoric. He thanked the Attorney-General for having opened his case with great calmness, and a moderation worthy of his station at the head of the bar of England, and representative of the Queen; but expressed some misgivings on the question whether the panoply with which the law covered the state traitor had been wisely removed. In addition to other privileges, the prisoner was permitted to speak for himself, after his counsel, at the close of the case; which might certainly have furnished an important test of truth in the present inquiry. By his own lips, the question sane or insane might have been effectively solved. "A person," said Mr. Taylor, "charged with attempting the Queen's life did not stand in the same position as if he had attempted the life of a subject. When the life of the Sovereign is supposed to be assailed by the hand of violence, the natural emotions of loyalty in the breasts of Englishmen lead them to prejudge the case, and addresses pour in to the Crown, founded on the presumption that a sane assassin had deliberately attempted the life of the Sovereign. I trust the day will never come when Englishmen will not rally round the throne at the bare thought of danger, and pour forth their loyal feelings; but these exuberant manifestations of loyalty, it must be admitted, are most prejudicial to the accused.

"It was impossible that any man in his senses could have imagined such a crime. This was a low carriage. The prisoner stood on the footway somewhat elevated above the level of the road. If he had fired at the Queen, he would not have had occasion to raise the pistol at all. In that case, the ball must have struck the opposite wall or lodged in the ground; because, the wall being fourteen or fifteen feet high, it was quite impossible that the ball could have gone over it. If there had been any ball it must have been found; because every exertion was made to find it, and these exertions have utterly failed. According to one witness, the man was only two yards from the carriage, another thought eight or ten

yards off. If such mistakes are made as to distance, may there not be a mistake also as to the pistols being pointed at the Queen? The hypothesis of the Attorney-General, that the balls went over the wall, was totally destroyed. If these marks on the wall were made by a ball, why has not the flattened ball been found and produced? Is it not likely that, in an idle silly frolic, the prisoner discharged those pistols loaded with powder; unquestionably a great outrage, and perfectly indefensible, but still that is not the treason charged.

"There was a somewhat similar case to the prisoner's in 1786: Rex *v.* Edwards. The culprit in that case came behind a young woman whom he had known, who was then walking with another person, and discharged two pistols at her back. There were two slight contusions discovered on examination, and the prisoner, when arrested and searched, was found to have two other pistols loaded to the muzzle in his possession, with which it was supposed he intended to have killed himself after he had killed his victim. Yet, notwithstanding all this, notwithstanding that the prisoner expressed his satisfaction at the idea of his having slain the young woman, and his regret on learning her escape, the jury acquitted him of the intention to murder, on the ground that the pistols were not loaded with ball. Was not that a stronger case? Was the evidence here sufficient to show that the prisoner had loaded the pistols with ball, and pointed them at the Queen to take her life?"

Mr. Taylor then took an elaborate review of the cases of Margaret Nicholson, Hatfield, and Lieutenant Curtis, to show that they all had premeditated the attacks they made on the life of George III., and took the surest means of executing their intention; yet, in each case, the offender was judged insane. At that time, also, events in France had excited the public mind, and a motive might suggest itself for acting the part of a regicide; but what motive could any sane person have for killing the Queen of England? A futile attempt had been made to implicate the prisoner in some plot, because certain papers had been found in his box. But there was no plot — no treasonable society. With all

the means and powers which the government possessed to bring this society to light, proof of its existence would have been brought before the Court had there been such *in rerum naturâ*. He would fearlessly ask the jury if they believed for one moment that the young man at the bar could have been connected with any political society without having its members dragged into the light of day. In what a state of society were we living, if such a stripling could be turned into the agent of some great political association! There was not a shadow of evidence that such a society had ever existed, except in the heated imagination of a silly youth. It would be shown that all the papers had been written by the prisoner himself, and were the creations of his own foolish fancy. With what view had these papers been produced, except to connect him with some midnight club of plotters. Being here, they furnished the strongest evidence against the prisoner's sanity. He would show that a predisposition to insanity existed in the prisoner, who was just at the age when it would be most likely to develope itself. Every person at all connected with lunatic asylums knew that a very large portion of the patients inherited the disease; and was it just or righteous that the law should crush such victims, and that the vengeance of man should follow the visitation of God? . . . .

"When one of the most glorious predecessors of the Queen was told by some officious courtier that there was a plot of her subjects against her life, she exclaimed, 'I will not believe that of my people which a mother would not believe of her children.' He was sure the same sentiments existed in the mind of their present gracious Sovereign. Her mind would be relieved by a verdict dispelling the notion that any sane person in her dominions could have conceived or perpetrated so atrocious an act. They could not perform a duty more grateful to their country or to their Queen than by expressing their deliberate conviction, that not a single subject could dare to raise his hand against one whose youth and personal attractions were the least portion of the means by which she bound the hearts of her people to her in willing allegiance and affectionate loyalty. The evidence he should tender on the prisoner's behalf—an object of compassion, not of punish-

ment—would enable the jury to give a complete negative to the charge that a sane Englishman had attempted the life of the Queen of England. They would give to the national disgrace and dishonour it would entail a refutation as lasting and imperishable as the records of that history on which their verdict would be written."

After this spirited peroration, Mr. Bodkin called several relatives and "hosts of friends" to prove the insanity of Oxford's grandfather, of his father, and of himself.

Sandham Kent, a carpenter, was acquainted with John Oxford, the grandfather of the prisoner. "His wife was my sister. He was a sailor about 1799, and raving mad. I was obliged to put cords on him. He was put in Petworth Bridewell, and kept there for a fortnight. We took him to the magistrate, and he sent him there. He was very queer at times in his conduct. Once he ran after me with a spit; I had not given him any provocation. At the time he was confined he broke the windows, and smashed every thing in the house. The things were not his own, but my father's. While he was in town, he used to be always laughing and jumping about, like any body *quite gone*. He was after that admitted into Greenwich Hospital. I never saw him in the infirmary."

When cross-examined, Kent admitted that the old sailor was given to drink a good deal. "I believe it was after those drunken bouts that he displayed a violent turn. I took him before the magistrate at Petworth, for throwing down and breaking the things in the house, and threatening our lives. He was allowed to go at liberty from Bridewell on promising to go to London. He went about Greenwich Hospital, like any other of the pensioners, five years or more."

Sophia Oxford, the widow of the prisoner's grandfather, stated that he was not so much unsettled when he had not been taking liquor as when he had. "I once saw a strait-waistcoat put on him, in 1821. It was necessary to have two men with him. I did not know him to be labouring under any delusion at any time while in the hospital. He had high notions, and he thought they ought to have paid him more homage. He thought they did not behave well to

him. In consequence of that he broke the things. They sent him to Bridewell. He was about four years in Greenwich Hospital. For the last twelve months he was steady, and kept from liquor."

Sophia Bartlett, daughter of the last witness, was less explicit in admitting his unsoundness. "My father was not altogether insane, more of an eccentric character at that time. He told me he was the Pope of Rome; and he would hoist his halbert over his shoulder. His duty while on guard at Greenwich College was to open and shut the gate. He would sometimes say he was St. Paul; that was both when at the gate, and when he came home too. I never mentioned it to a doctor."

The ravings of the son took a more violent turn.

Sarah Kitchen knew the prisoner's father when he was a little boy at school. "One time I saw him go to the top of the house, get out of the window, and hang by his hands. A person came and told me of it. His mother was sitting in the bar with me, and she and the woman went up stairs, and pulled him in. He was hanging by the sash at the bottom part of the window. I cannot say what height the window was from the ground; it was on the first floor. He was hanging over the street in that way. He was about twelve or thirteen years old."

The whole seemed a silly story.

Hannah Oxford spoke to facts of more importance, and, harrowing as they were, told the terrible detail of wrongs and woes of a madly brutal husband, and a madly mischievous son, with unfaltering voice and unshaken nerve. A great part of the narrative was so minute, and made up of such 'trivial fond records,' as to call down a rebuke from Lord Denman on the examining counsel. In this analysis the irrelevant and immaterial gossip is omitted. "I am mother to the prisoner. I was twenty years of age when I married his father; he was also twenty. I was acquainted with him about six months before I married him. He was singular altogether, not like any other man I was acquainted with. I did not marry him with the consent of my friends. I refused to marry him a great many times: on those occasions

he would pull a razor out of his side pocket, and bare his throat, and say he would cut his throat in my presence if I refused him. I have at other times seen him with pistols and poison. He would show me the paper with oxalic acid. At the time the Princess Charlotte was lying dead, he followed me out of the house, with a double-barrelled pistol loaded with slugs, and said if I refused to have him he would blow out his brains before my face, and I promised him then. We were married on the 28th of April in the following year, 1818. The day before we were married, a person had written to his master to inquire his character, and it was not satisfactory; it arrived that day. I then told him I would not be married to him. On my telling him that, he went into a violent rage, pulled out a roll of bank-notes and the license, and burnt the notes. I then said I would be married. The notes were entirely consumed; he lighted them, threw them on the ground, and watched them burn out. They were bank-notes of his own: a very large roll of notes. He was earning on the average, I should say, 20*l.* a week at that time. He was very skilful as a workman, and very quick. He was a gold chaser, which at that time was a very lucrative employment. He was considered the best workman in Birmingham. We had seven children. The prisoner was the third child. The first child is living. At the time I was pregnant of the second child, my husband's conduct was dreadful, brutal; he neglected me so that I fainted three or four times a day for want of food. He once broke a jug and threw a piece at me. I have the wound now. He annoyed me dreadfully by grimaces, while I was pregnant of my second child: and by jumping about like a baboon, and imitating their grimaces. That continued during the whole period of my pregnancy of the second child. That child was barely born alive. It was a confirmed idiot, and its countenance was precisely as the father looked when he made those grimaces. It put its tongue out like he did. It lived between two years and four months. During all that time it had not the least appearance of reason. It never spoke or walked. It was very voracious. My husband's conduct was much the same during my pregnancy of the prisoner;

grimaces, and so on. He kept a horse at one time, and I have seen him bring the horse into the house. He led it in by the bridle, and he seemed, like a child with a toy, amused at his own folly. He brought it into the sitting-room, and led it about. I have frequently applied to him for money for the support of the family, which he has refused, and abused me, and he once knocked me down and fractured my head."

Was your mind at all affected by any violence done to you by your husband?—"When asleep I screamed, and I was obliged to be woke up in my dreams. I remember one day walking with my husband, he left me, saying he had a box to go off by to-morrow, and he must go and finish it. He left me at my mother's on telling me that. After that I went home with the servant and child and found the house locked up. It was afterwards opened, and part of the goods found to be removed, the house in confusion, and my husband gone. He was taken by the authorities of the town next morning, in the act of leaving Birmingham for London. I had not had any quarrel with him at that time, not a word or sentence of anger. He then went to Dublin, where he stopped four months, leaving me and my children. He did not appear capable of seeing the folly and wickedness of which he was guilty. He would laugh in the most triumphant manner, and he had, I should say, an almost supernatural look with him when he had done wrong, and when I was distressed. The day I was put to bed with the first child he kicked me violently because I did not agree to something which he proposed to me to do. I have known him take poison twice. My husband died on the 10th of June, 1829. The prisoner was born on the 19th of April, 1822. For the first seven years of his life he was under my care. He would burst out crying when there was no one near him, and no one speaking to him, and he was always very troublesome. It was different to the mere waywardness of childhood. He had a great many other very singular habits. He would get into a violent rage without any cause. He would deliberately break any thing, and wilfully destroy anything that he took in his hand. He once pointed a pistol at me. That was the first day he brought

them home. I should have told you that my husband, during my pregnancy with the prisoner, pointed a gun at my head. The prisoner was particularly fond of fire-arms and gunpowder. I have frequently beat him for laughing when he was much younger. That habit was continued up to the present time. He would laugh hysterically after gloomy fits, and fits of violent passion. It was an involuntary laugh. When at home, he was in the habit of going on the roof of the house and throwing at people as they passed. He was brought home one night by a policeman, who informed me he had been taken to the station-house. He had got behind a carriage and frightened a lady who was in it by making a great noise, and she was pregnant, and her husband, who was a solicitor, was exceedingly alarmed and angry. That was stated in his presence. I went next morning to inquire after the lady's health, and apologise. He took no notice when he heard this account. I knew of his having no companion but Master Linton, who has been examined. He never to my knowledge belonged to any club or any meeting. He wanted to go to sea last winter. He wanted me to go to Birmingham for 50*l.* to provide him as a midshipman. I told him of the folly of his going to sea when he knew nothing about nautical affairs. He said he should have nothing to do but to walk about the deck and give orders. I said, 'But you must first learn navigation.' He said he would allow me half his pay, and how proud I should be of my son when I saw his name in the papers, Admiral Sir Edward Oxford! When he brought the pistols home, I said, 'How could he think of laying his money out in such folly?' and he said, 'They were not his, he was saving them for a young man.' I do not know whether there was anything in the pistol when he presented it at me. He had only just then brought them in. He has behaved violently towards me."

Mrs. Oxford then proved the paper headed "Rules" and the three notes to be in her son's handwriting, and was cross-examined by the Solicitor-General.

"I cannot say exactly how long the prisoner was at school at Walters'. He next went to Mr. Robinson's, in the New Cut, Lambeth; that is about eight years ago. Mr. Walters

was in Birmingham. He was at Mr. Robinson's several months. Mr. Robinson used to come and complain of his inattention. He next went to a school at Camberwell, and remained there a few months: there were the same complaints then of inattention and wildness. He went to Mr. Minton's from his aunt's. He was in the same situation there, as barman: he lived there twice. He received wages at his aunt's. He lived about four or five months with Mr. Minton the first time. He then came to my house for a short time, and Mr. Minton had him back again. He had 20*l.* a year there. His next employ was at Mr. Parr's, in Wilderness Row. He remained there till Mr. Parr left the house, and remained a short time with the persons who succeeded Mr. Parr, to initiate them in the business, for which he received a sovereign, I believe. He then came home for a short time, and then went to Mr. Robinson's, in Oxford Street. He gave Mr. Robinson notice, and afterwards he staid for a short time to oblige Mr. Robinson, till he suited himself. He had been home a week and a day, when I went to Birmingham. I left him in the lodging. I desired he would look out for another place. He said nothing was stirring, and he should rather wait till a good place offered itself than answer advertisements. I got him his first place, and he got himself the others."

The Court then adjourned, and on the following morning some neighbours from Birmingham were called, who confirmed Mrs. Oxford's stories about her husband's brutal and absurd, if not mad conduct; and Dr. Birt Davis related his attendance upon him when labouring under symptoms of poisoning by laudanum. Having been in court during the trial, he was asked his opinion of the prisoner's sanity.

Supposing a person in the middle of the day, without any suggested motive, to fire a loaded pistol at Her Majesty, passing along the road in a carriage, to remain on the spot, to declare he was the person who did it—to take pains to have that known, and afterwards to enter freely into discussion, and answer any questions put to him on the subject, would you refer such conduct to a sound or unsound state of mind? —If to that hypothesis were added what I deem a proof of hallucination——

Court. The question is, whether upon those facts alone you should judge a person to be insane?—I should judge him to be insane upon those facts alone, but I should be stronger in that opinion if I was permitted——

You mean to state, upon your oath, that if you heard those facts stated, you should conclude that the party must be mad?—I do.

Without making any other inquiry?—Yes; taking this into consideration, the absence of motive, the absence of precaution, the deliberate owning, and the free discussion afterwards of his own conduct, criminating himself in that way immediately afterwards, with the danger staring him in the face.

Mr. Bodkin. Suppose, in addition to those circumstances, it was shown, that just before the transaction, the party had written these papers which you have heard read, would that conduct strengthen, or otherwise, the inference that you have already told us you draw? It would greatly strengthen the inference.

He was cross-examined by Sir F. Pollock.

You have answered some hypothetical questions put by my learned friend opposite (Mr. Bodkin), I beg to ask you whether you give that answer from your knowledge as a physician, or from your experience as a coroner or as a magistrate, or merely as a member of society?—I answer as a physican. I think the circumstances which have been supposed have, medically speaking, a tendency to prove insanity.

Court. We do not exactly understand what you mean when you say medically?—If, as a physician, I was employed to ascertain whether an individual was sane or insane, in whom I found those facts, I should undoubtedly give my opinion that he was insane.

As a physician, you think every crime that is plainly committed to be committed by a madman?—Nothing of the kind; but a crime committed under all the circumstances of the hypothesis.

What are the circumstances in the crime itself which you think show madness?—The crime is committed in open day, it being obviously of great magnitude and danger; of great atrocity; it is committed without any precaution, without

any looking out for the means of escape; it is afterwards spoken of openly; so far from concealing the criminating facts —facts which might afford a chance of escape, — the existence of the balls is acknowledged; the free discussion of the circumstances, the absence of motive — by the free discussion, I mean a free respondence to the questions put to him immediately afterwards in the cell — the questions which Lord Uxbridge stated yesterday he did put, — he said, on Lord Uxbridge entering the door, 'I did it.'"

John Wright, who had been articled to the prisoner's father to learn gold-chasing, fully confirmed his wife's opinion that he was not "right in his head." "On one occasion he presented a gun at his wife, when in the family-way with the prisoner. I had been out shooting, and I presented Mrs. Oxford with some of the birds; and he took the gun up and presented it at her. I took it from him and told him it was loaded, and she was very much frightened: she was then pregnant with this boy. When I took the gun from him and said it was loaded, he began to pull faces at her."

George Sandon, a tailor, with whom the prisoner lived a twelvemonth when he was eight years old, spoke to the singularity of his ways and impish tricks. "When he was out with other children playing, he would get nettles and beat them very severely, and make them blister on their arms, which is something more than common with children; and at other times he would get up to the room window and throw things out; at other times, he was very much addicted to laughing and crying both at a time, and when I asked him why he did it, he would say (in fact he would give me no straightforward answer) he did not know. Sometimes I would give him a box on the ear, and instead of crying he would make a very peculiar laugh. Not being a child of my own I did not like to be very harsh with him: he was always up to some singular trick, always mischievous, more than other boys generally are."

The schoolmaster, Benjamin Walters, who had Oxford under his care a year and a half, spoke to his quickness in learning and badness of disposition. "His conduct was very peculiar, and different to that of other boys; I always found

him very different to any boy I ever had to do with. I thought there must be something in him contrary to other boys; his behaviour was different. I have punished him for mischievous tricks to other boys; and so it went on all the time he was with me."

Clarinda Powell, his aunt, employed him as barman at the King's Head, Hounslow, two years, and considered him in an unsound state of mind. "One night in particular, he put out the lights when the house was full of company, at ten o'clock; the hour of closing was twelve o'clock. There were five gas lights burning. He could not account why he did so. We were likely to have a disturbance, all the company being in the dark. I was obliged, at the risk of my life, to come down stairs, being ill in bed at the time, and he was going on violently. I was obliged to come down to soothe him. He read very much while he was at my house; generally sea voyages, that was the principal. He used to talk in a random way. I never asked why he left me. He left me of his own accord. He was treated with every kindness. He talked of becoming a great man. He used to talk of going to sea; that he should come to be very great, and things not very likely to take place."

Joseph Day, a corporal in the Guards, gave a singular instance of the prisoner's fondness for mischief. "One morning I left the house to call the roll of men, and I was brutally knocked down with a poker, and brought back. The following morning I was in conversation with Mrs. Powell, and the prisoner said, 'Should you know the man if you saw him? was he short, thick, thin, or a tall man?' and ran over various things; his height, age, and so on: he said nothing more about my knowing the man at that time. I thought he was unsound in that and other instances. I had occasion to go to the house a week or fortnight after, and he was still laughing and jeering and making very curious remarks, and said, 'I would rather be put to the mouth of a cannon-ball, than be served as you was.' It was jeering me, and he seemed pleased at the injury I received."

The publicans at the next two places where he served spoke to his strange habit of laughing and crying without cause.

One of them said, however: "From my observation of him while he was with me, I considered him of sound mind, but he was subject to fits of laughter, which at times were uncontrollable. If he let any thing fall, or if I did, he would burst out laughing. He said he could not help it. He was very correct in his conduct in all other respects. When he took money, he had just to put it into the till."

John Tedman, an inspector of police, and likely therefore to be a minute inspector of character, mentioned facts which led him to infer unsoundness. "I have gone into Mr. Minton's of a morning, and found him crying very much with his apron before his face and his hands up. I saw that frequently. I have asked him what was the matter. He said, 'Nothing now, it is all over.' I asked him if any one had ill used him. He said 'No.' At other times I have found him laughing very much. I have asked him why he was laughing. He said the old women drank so much gin, it would make any one laugh."

His sister spoke to his going out on the day of the firing, and to a conversation which certainly evinced no symptoms of wandering. "He read a good deal: he used to have books from the library. Once he read the 'Black Pirate' and 'Jack Sheppard' and 'Oliver Twist.' I knew of his going to the shooting gallery. On the day he fired in the Park, he left home with the intention of going to the shooting gallery. He left home about ten minutes after three o'clock that day. He told me he was going to the shooting gallery, and to buy some linen for me to make him some shirts; and he told me he would bring some tea home from Twining's, in the Strand. I never heard him talk about 'Young England,' nor of any society that he belonged to, or said he belonged to."

Emily Chittenden, the nursery maid at the public-house, recited the address of a letter which he had sent her a few weeks before. "As far as I can recollect, it was addressed—

"'Fly postman, with this letter bound
To a public-house, the Hog-in-the-Pound,
To Miss Chittenden there convey,
With *speedility* obey;
Remember, my blade,
The postage is paid.'

"To this was added the number of the house, and name of the street: it reached me by the post. She considered him in a sound state of mind, but sometimes very eccentric."

The medical witnesses were then called, and as their evidence is most important, though members of the two professions differ materially as to the effect of their opinion, we give their testimony at greater length, omitting only unimportant particulars.

Dr. Hodgkin. I have been a physician about fourteen years. I have been lecturer on morbid anatomy, and have written some works: lectures on pathological anatomy, and lectures on the promotion of health.

Upon all the circumstances of hereditary insanity in the family, supposing a crime is committed without a motive, that the party committing the crime is subject, in consequence of that crime (if brought home to him), to lose his life, and that on the commission of that crime, instead of attempting to escape from justice, he delivers himself up to the law and seems reckless of the consequences, are you as a medical man prepared to say whether those circumstances taken together in the commission of the crime, indicate a sane or unsound state of mind in the criminal?—By themselves I should consider they were circumstances of strong suspicion, but other facts should be sought before one could be warranted in giving a positive opinion. Those would be facts leading to a strong suspicion that the party was insane. If it should also appear that there was a previous delusion, that would certainly strengthen the case. Supposing there was inherent insanity in the family, my opinion, grounded on cases which have occurred, would be strengthened that the individual was insane: striking cases are on record.

Mr. Sydney Taylor. Are there instances on record of persons becoming suddenly insane, whose conduct has been previously only eccentric?—Certainly there are. Supposing, in addition, that there was previous delusion in the mind, my opinion would be that he was unsound. Such a form of insanity exists and is recognised.

Cross-examined by Sir Frederick Pollock. What form of insanity do you call it?—*Lesion* of the will, it has been called

by Le Marc, insanity connected with the development of the will. I should not consider a headstrong person to be under such an influence. I mention *lesion* of the will as a term under which a highly reputed writer on insanity has chosen to designate a form of insanity, in which flagitious acts, sometimes only eccentric acts, are committed. It means more than a loss of control over the conduct. It means morbid propensity. Moral irregularity is the result of that disease. I do not think I ever met with a case where the only apparent symptom was moral irregularity, where I had no medical indication of physical disease. I think that committing a crime without any apparent motive is an indication of insanity; doing any thing of any sort, without any motive, is not an indication of unsoundness of mind in every instance.

Mr. Sydney Taylor. Do you not make a difference when a man has to suffer the penalty of death for the act?—Certainly. The species of insanity which Le Marc calls *lesion* of the will is a well-recognised species of insanity.

Court. Do you conceive that this is really a medical question at all which has been put to you?—I do. I think medical men have more means of forming an opinion on that subject than other persons. I am supported in that opinion by writers on the subject, by Loura and by Le Marc, whom I have alluded to, who is a particularly eminent writer. My reason for thinking so is, because it is so stated by those writers.

Why could not any person form an opinion whether a person was sane or insane from the circumstances which have been referred to?—Because it seems to require a careful comparison of particular cases, more likely to be looked to by medical men, who are especially experienced in cases of unsoundness of mind.

What is the limit of responsibility a medical man would draw?—That is a very difficult point. It is scarcely a medical question. I should not be able to draw the line where soundness ends and unsoundness begins. It is very difficult to draw the line between eccentricity and insanity.

John Conolly, Esq., M.D. I am physician to the Hanwell

Lunatic Asylum. I have 850 patients under my care. I have had some experience in the treatment of disorders of the mind. I have seen and conversed with the prisoner. In my opinion he is of unsound mind.

Cross-examined by Mr. Attorney-General. When did you see him?—The day before yesterday, for the first time. I saw him on that occasion, and I have been in court the whole of yesterday and this morning. I never saw him in private more than once: that interview lasted perhaps half an hour. A person who is unsound need not, in all cases, be under the care of some person: it depends on the character of the insanity. There may be individuals who may be at large, and associate with others, and still be of unsound mind.

Do you consider there is any danger in the unsoundness you have discovered in the prisoner?—Certainly I do. He did not exhibit any violence. He replied willingly to the questions I put to him, but his answers were very unsatisfactory. He seemed to have a very indistinct impression of the circumstances. He knew he was to be tried. When I spoke to him of his trial, wishing to see what impression it made upon him, on two occasions he said, "What trial, when?" and subsequently he seemed to know the trial was about to take place the next day, and what it was. I asked him if he was not conscious that he had committed a great offence in shooting at such a young and interesting person as the Queen. He said, "Oh, I might as well shoot at her as any body else." I examined the prisoner's head. It appeared to me that the formation of the anterior part of the head would indicate an imperfect development of a certain portion of the brain. I frequently find that form of head in insane persons. There are many persons of that form of head who are not insane. My notes were written as soon afterwards as I could possibly write them. They are very brief. They were not made with any intention of being read. (*Reads.*) "A deficient understanding; shape of the anterior part of the head, that which is generally seen when there has been some disease of the brain in the early period of life. An occasional appearance of acuteness, but a total inability to reason. A singular insen-

sibility as regards the affections. An apparent incapacity to comprehend moral obligations, to distinguish right from wrong. An absolute insensibility to the heinousness of his offence, and to the peril of his situation. A total indifference to the issue of the trial; acquittal will give him no particular pleasure, and he seems unable to comprehend the alternative of his condemnation and execution; his offence, like that of other imbeciles who set fire to buildings, &c., without motive, except a vague pleasure in mischief. Appears unable to conceive any thing of future responsibility."

Court. Of course in that conversation you had with him you were watching his manner as well as what he said?—Certainly. My judgment is formed in part by his manner, as well as by what he said.

Did you try to ascertain whether he was acting a part with you or not?—I tried to ascertain it as well as I possibly could: my judgment is formed upon all the circumstances together.

Dr. Chowne. I am a physician of Charing-cross Hospital. I have been a physician twelve or thirteen years. I am lecturer in that hospital on medical jurisprudence.

If you heard of a person committing a crime without the ordinary inducements to crime, either revenge or interest, and that crime exposes him to loss of life, and he seems reckless of consequences, and delivers himself into the hands of justice, and appears wholly exempt from any thing like consciousness of responsibility for the act, what opinion should you form of that state of mind?—I should consider it an exceedingly strong indication of his being in an unsound state of mind: a propensity to commit acts without an apparent or adequate motive under such circumstances is recognised as a particular species of insanity called in medical jurisprudence *lesion* of the will. I do not know a better term. It is an old term. It has been called moral insanity; may I be allowed to give you an example? It is by no means an uncommon thing for me to have patients who complain to me that they are impelled with a strong disposition to commit suicide, of the madness of which act there can be no doubt, and yet there is no one symptom about those people indicating mental disease;

there may be a slight degree of general indisposition, but no symptoms at all of any mental irregularity: these patients will say, "I have nothing to complain of, I have no unhappy news, I have no disappointment, I have no unsatisfied wish; my husband (if the case be so) is kind to me; I have nothing at all to impel me to the act but a strong impulse." I have been asked to prescribe for such cases, not in one sex only, but both in men and women.

Now, in that sort of mental disease, is it quite consistent with the person performing the functions of life and the duties of life with accuracy? — There is no doubt of it; they can perform the duties of life with accuracy; I do not say with the same facility. I saw the prisoner in Newgate the day before yesterday, by permission of the Secretary of State, in company with Dr. Conolly, Mr. Clark, and Mr. Maule. I had some conversation with him.

Now, from the conversation you had with him, and the opportunity you had of observing him, what is your opinion as to the state of his mind? — I should consider his state of mind is essentially unsound: there seems a mixture of insanity with imbecility. I regard the incapacity of controlling laughing and crying as proofs of imbecility, not as positive proofs in themselves, but as assisting to form my opinion.

Cross-examined by Mr. Solicitor-General. This propensity to suicide in the patients you speak of, were they persons performing all the duties of social life? — They were persons proceeding with their duties of life, and in all their ordinary avocations. Despondency of mind is very often connected with disorders of the stomach; but it very often happens that the physical cause has not been obvious, and has not developed itself at all; it is not at all necessary that the physical cause should be obvious. In such cases, I prescribed for disease in the stomach; I found those remedies did operate on the mind. Laughing and crying without control is connected with hysteria, and also with imbecility. Generally, when connected with hysteria, it is associated with the sensations, there must be fainting and *globus hystericus*, which arises in the throat. The questions put to the pri-

soner were not numerous; some were put by one gentleman, and some by another; I endeavoured to impress upon him that he was labouring under error when he considered it was incapable of being proved there were balls in the pistols; I assured him, in a manner I thought most likely to make him believe, there really were; that the fact of there being balls in the pistols would be proved against him; that his responsibility was a terrible one, and in all likelihood it would end in capital punishment, and if he knew whether that was decapitation. He said he had been decapitated in fact a week before, for he had a cast taken of his head. I endeavoured to make him understand it would be proved that there were balls in the pistols. I knew he had the impression that it could not be proved, from questions asked by myself. Something was said to that effect by him. He insisted that there were no balls there. The fact did not occur to me before. I do not remember his words, but the remark was to the effect that it was impossible. The question as to whether he was not concerned about his mother he treated with indifference, and seemed to be totally destitute of feeling, apprehension, or thought on the subject. During the whole time I was struck with a very peculiar manner. He was not an instant (though I believe it is partly habit) that he was not playing with a pencil and a piece of Indian-rubber, with which I found him drawing. When we went into the room he was quietly drawing, with a pencil on a piece of a paper, something like a landscape. During the whole conversation he was leaning with his head on one hand, with the other flapping about with a piece of Indian-rubber, sometimes clapping one pencil against another; in fact, a manner entirely without acute feeling or acute consciousness; and in order to ascertain how far what I would call dullness of manner, that peculiar manner, might indicate idiocy even, I desired him to get up and walk; and if I had supposed that he was acting when he was clapping the Indian-rubber about, that idea would entirely have been done away with by the manner in which he walked across the room, which he did with a great deal of lightness, liveliness, briskness, and smartness, not at all as if endea-

vouring to put on a peculiar manner. It occurred to me that it was perfectly natural, not as if he was acting or making the least pretence. The interview lasted, perhaps, about three quarters of an hour. I did not make any note of the conversation, neither at the time nor after.

Did you form any opinion at all from the prisoner's manner during the trial?—I did. I considered that manner was a continuation of the same kind of manner, but under some restraint here. I have no observation to make as to the form of the head. I also subjected the prisoner to what is called the arithmetical test. I infer nothing from it. I merely mention it because it did occur. He was pretty ready in casting up, but not ready in subtraction. I am not quite certain whether at the moment he was giving his attention to it; indeed I consider it is a fallacious test.

James Fernandez Clarke. I am a practising surgeon, and have been so between three and four years. I have had some experience in the treatment of insane persons, such as usually falls to the lot of the general practitioner, perhaps a little more, for having been so short a time in practice. I have been in the habit of attending the family of the prisoner. I have known him nearly two years. I accompanied Dr. Conolly and Dr. Chowne, in their visit to him, the day before yesterday. I have formed an opinion as to the state of his mind; not from that alone, but from other circumstances which I had had personal opportunity of seeing.

What is the opinion you have formed as to the state of his mind?—That it is decidedly that of imbecility. I consider it more imbecility than any thing. I do not like giving definitions. In my judgment he is decidedly of unsound mind. During the time I have been attending his mother and sister occasionally, I have had opportunities of seeing the prisoner, and his mother has frequently mentioned to me that she thought that there was something exceedingly peculiar about him, and asked what I thought. The chief thing that struck me was the laughing, which has been so much dwelt upon, the involuntary kind of laughing, with what perhaps we might call a kind of general hysterical tendency in him. He did not seem to me to have that sufficient

control over the emotions which we generally find in sane individuals.

Did you notice, at any time, any other symptom that is usually connected with hysteria?—My interviews with him were not prolonged, and my attention was attracted to him chiefly by the desire of his mother, who said she was afraid he was getting in the way that his father was. I did not know his father. I put one or two questions to him, when I saw him in Newgate. I heard questions put by the other medical men as well, and the answers which he gave. I watched his manner during the interview.

Did it appear to you to correspond with his manner on former occasions on which you had seen him, or to differ? —Much the same character. Great insensibility to all the impressions which were attempted to be made upon him. On one occasion, some time ago, my attention was more particularly directed to him, from a circumstance which this occurrence has brought very strongly to my recollection; I think it is about five months since I was on a visit at his mother's house. I called in my rounds to see her. She was very poorly at the time. If I recollect right, he was sitting at the fire reading a book. He took no notice of me when I entered, and seemed to be absorbed in what he was reading. His mother made some observation to him; such as, "How rude you are." "Why not take notice of Mr. Clarke?" "Why sit there and behave in this kind of way?" He did not seem to notice the observation of his mother at all. He seemed still to be absorbed in the book. She put the question to him again, and there was still the same apparent reverie: and when she touched him, to put him in mind that some one was there, he jumped up in a fury; such as at the moment alarmed me, and swore that he would "stick her," I think was the expression he made use of; but certainly it was such an expression that at the moment I drew back, thinking he meditated some violence. After this transaction had occurred, the mother called on me in great trouble, and made a communication to me, upon which I wished to see the prisoner, accompanying that with some opinion of my own, which I had formed. I did not see the prisoner until

the day before yesterday, when the permission of the Secretary of State was obtained. I had made application at the Home Office on the Monday.

In cases of hereditary insanity, is there any particular period of life at which medical writers consider it likely to break out, to appear? — In that kind of insanity particularly, which is connected with acts of violence, Escoreaux says, in several cases which bear great analogy to the one which we might suppose to exist at present — in six of those cases I think that three of them took place at the age of puberty, between the ages perhaps of fourteen and twenty.

Cross-examined by Sir Frederick Pollock. I never prescribed for the prisoner. I did not recommend any course of treatment. I considered that the disease was mental, one of those weak minds which, under little excitement, might become overthrown. I did not alarm the mother, for she is an exceedingly nervous woman. I recommended no course of conduct, diet, or treatment whatever.

In short, I am to understand that you never gave any advice on the subject, of any kind whatever, to his mother? — Simply in conversation; I gave my opinion rather as to his state than any advice, nothing further. I never gave any advice, I was never asked my advice. I am not aware of any medical treatment likely to be useful in cases of hereditary insanity. I was told he lived a regular life, no intemperance, no late hours. His bodily health appeared good.

This closed the case for the defence.

The reply of the Solicitor-General, Sir Thomas Wilde, was exceedingly subtle; and, after dispelling the popular topics of compassion, collected, as into one burning focus, the scattered radii of evidence, to prove Oxford's guilty intent, and liability to punishment: —

"The acquittal, to be satisfactory, must be founded on evidence. Violence, irregularity of conduct, nay, insanity itself might exist, without doing away with the responsibility of his conduct. I first ask, was the Queen the object of attack? No other individual filled that station in society which could present such an object of attack as the Queen, whether to a sane or insane person. Had the prisoner aimed

at any one else, would his anxious inquiry have been about the Queen? She was the sole object of his attention; no other individual occurred to his mind.

"What was the object of firing?—destruction. Could any other be suggested? One pistol was fired; and if his object had been to create alarm merely, why discharge the second. Suppose the two gentlemen were mistaken as to the marks on the wall. If the jury had ever discharged guns or pistols and attempted to look for the balls, they would know the difficulty, even in a limited space, of finding a ball. Consider the height of the wall. A very slight elevation of the muzzle would be sufficient to carry the ball over. The second pistol was fired up the road; and it was extremely difficult, of course, to see what direction it took. It would be a very dangerous doctrine to promulgate, that, when a person fired a pistol at another, he could not be made amenable to the law, because the bullet with which it was loaded happened not to be found. As to the case cited, here the pistols were discharged; and when the party who fired them off was proved to have powder and bullets in his possession, no person could doubt the object. What was the motive for firing the pistol? The intention of the prisoner could not have been merely to excite a laugh, to create mischief, and to cause a public excitement. The question, 'Is the Queen hurt?' distinctly imported that an act had been committed by which the Queen could and might have been hurt. What would be the condition of society, exposed as we all were to such attacks, and the infliction of death by such means, if, with the evidence of previous preparation of the means, the use of balls and pistols, inquiries as to the effect of their discharge, and whether the parties were hurt, coupled with admissions incidental and direct of the fact that balls were in the pistols, what would be the state of society if evidence like this left an assassin the chance of escape, merely because the balls could not be found?

"The doctrine of irresponsibility seemed equally dangerous. The prisoner was traced at school, and from school into three distinct services, and never treated as mad. Was the prisoner capable of knowing that the consequence of his act

might be the infliction of death? that he would thereby subject himself to punishment? Where could they find any delusions existing, inducing the prisoner to commit the act? Evidence of insanity, where the prisoner had not been confined, should always be received with caution, especially where the persons giving evidence had invariably treated this person as sane. As to the hereditary taint, the grandfather behaved with violence. They treated him as a criminal, and the magistrate sent him to Bridewell. If he were mad, he should have been committed to an asylum, not to gaol; should have been soothed, not excited; and those who treated him as a criminal, came here to prove him mad! How was he released? On his promise to leave the place — the promise of a madman! He was then admitted into Greenwich Hospital. Was it likely a man observing all the regulations of Greenwich Hospital for five years could be considered mad? Would he have been excused if charged with forgery or fraud on the ground of insanity? They very frequently heard remarkable medical evidence; and if these eccentric acts were proof of insanity, many persons who were riding over pavements, knocking down watchmen, and committing similar freaks, were laying up a large stock of excuses for the commission of crimes. He regretted that the mother of the prisoner should have been called; but she spoke of the misconduct of husband and son with great firmness of nerve. Did she consent to marry a man she thought mad? Take her judgment of his sanity from the fact of marriage. The father was not treated as a madman, nor was the son. It was most important to check the evidence given, especially when the witnesses were relatives, by the conduct of the parties giving it. At school he was corrected; his mother corrected him. Would the mother have confined her child in a cellar because he was insane? She corrected him for the very faults now put forward as proofs of insanity. On not one occasion had he been treated as a lunatic, and no evidence sufficient to make void a civil contract had been given. From the fact that Oxford was never known to talk about his conspiracy, he, Sir Thomas Wilde, drew the inference, that the existence of the society

of Young England was not a delusion of the brain, but that the lad knew all the time it was a foolish fabrication. Oxford was trusted by his employers, and did not leave one of them on account of mental incapacity. He laughed and cried frequently; but it did not appear that he laughed when he had his ears boxed or was beaten, or that he cried when he was pleased. Like other men, his laughter was elicited by joy, and his tears flowed from sorrow."

The question put by the Solicitor-General, whether the same evidence in a commission out of Chancery would have warranted a verdict of *non compos mentis*, is hard to answer. If length and breadth be taken into account, the number of days and hosts of witnesses, stronger and more ample proof seems required in civil than in criminal proceedings. "The trick of laughing suddenly without cause was so common, that if this were token of imbecility the lunatic asylum would overflow with gigglers. He did not wish to introduce anything ludicrous into such a case, but he believed a letter was once directed to Sir Frederick Pollock's brother thus:—

"'This is for David Pollock, Esquire,
For him in Elm Court enquire,
On the first floor, look no higher,
There you'll catch him;
He'll pay you twopence for this letter,
He never paid it for a better,
If he does not, like a setter,
Watch him.'

"Doggerel poetry in the direction of a letter was no proof of insanity; for this address was actually written on a letter to Mr. Pollock by a celebrated literary character of the day. The prisoner having all along displayed a morbid desire to be talked about, these letters written by him were referable to the same feeling and object. Was his making no attempt to escape an indication of an unsound mind? If he had made such an attempt it would have been a great proof of madness. He was surrounded on all sides by the multitude. He took such a reasonable view of his situation, as to see that he had no chance of escape, and gave himself up quietly. There was an iron railing on one side, and a wall on another, and

on all sides the Queen was surrounded by her best guards, though not in red coats, her people, who, one and all, were ready to seize the assassin.

"His silly letters were mere waste paper. A criminal should not be permitted to write out for himself a certificate of lunacy. The prisoner had been allowed the unrestrained use of fire-arms and powder, and was well acquainted with their fatal effects on human life. Would his mother have trusted a madman with them? Would she have left her mad son in the same house with her daughter? She desired him to look for another place, and he made answer that there was nothing stirring just then, that he would wait till a good place turned up, and that he preferred this to answering advertisements. Where was the imbecility or insanity there? The medical men went to Newgate predisposed and predetermined to see a madman. Suppose that the prisoner was unfeeling, violent, indifferent to his own fate; and that he preferred notoriety to any other consideration, what evidence did that supply of his being in a state of moral irresponsibility? You would not expect to find a man capable of committing such an act endowed with very fine feelings of sensibility. There was nothing to alter the quality of the act, or show that the prisoner was incapacitated by disease from the exercise of his judgment. Criminal responsibility secured the very existence of society. The jury must consider truth, and not the consequence of their verdict. Mercy was a great and valuable attribute, but justice greater and more valuable. Mercy was the second duty of a court of justice, justice was the first."

After this acute and spirited reply, Lord Denman summed up the evidence, clearly defining what extent of delusion would exonerate the patient from criminal responsibility, and pointing out the fallible, in some respects dangerous, theories of the medical evidence.

"If the jury thought the prisoner was at the time labouring under any delusion, which prevented him from judging of the effects of the act he had committed, they could not find him guilty. He might be labouring, perhaps, under a delusion which affected every part of his conduct, and was not

directed to one object alone. If that were the case, and if the disease affected him at the time the act was committed, then he could not be held accountable for it. One cannot say what a person, labouring under such a delusion, may do, and the motive, in that case, would not be apparent. With regard to the motive, a love of notoriety had been suggested, but might not this absurd love of notoriety as well have been gratified by firing pistols unloaded as loaded? and if they were unloaded, they could not substantiate the statutable offence. But although he laboured under a delusion, if he fired the loaded pistols at the Queen, knowing the result which might follow from his conduct, and although forced by his morbid desire for notoriety to the act, he would be responsible for his act, and liable to punishment.

"It is for you to determine whether the prisoner did fire the pistols, or either of them, loaded with a bullet. Supposing, Gentlemen, that you should come to a satisfactory conclusion that the pistols or one of them were loaded, then the defence which has been set up raises the further inquiry, whether, at the time the prisoner committed the act, he was responsible for it. There might be cases of insanity in which medical evidence as to physical symptoms was of the utmost consequence. But as to moral insanity, he, for his own part, could not admit that medical men had at all more means of forming an opinion on a case than were possessed by gentlemen accustomed to the affairs of life, and bringing to the subject a wide experience. The mere fact of the prisoner's going into the Park and raising his hand against the Queen, was not to be taken as a proof of insanity, particularly if we suppose that he was naturally reckless of consequences. It was a mark, doubtless, of a mind devoid of right judgment and of right feeling; but it would be a most dangerous maxim that the mere enormity of a crime should secure the prisoner's acquittal by being taken to establish his insanity. Acts of wanton and dangerous mischief were often committed by persons who supposed that they had an adequate motive; but they were sometimes done by those who had no adequate motive, and to whom they could confer no advantage. A man might be charged with slaying his father, his child, or

his innocent wife, to whom he was bound to afford protection and kindness; and it was most extravagant to say that this man could not be found guilty, because of the enormity of his crime."

The jury, after retiring three quarters of an hour, returned at a quarter past six with the special verdict—"We find the prisoner, Edward Oxford, guilty of discharging the contents of two pistols; but whether or not they were loaded with ball has not been satisfactorily proved to us, he being of unsound state of mind at the time."

The Attorney-General, with prompt dexterity, as soon as the verdict was delivered, referred the Court to the statute 40 Geo. 3. c. 94., which provides that persons acquitted on grounds of insanity, shall be imprisoned during the King's pleasure.

Mr. Sydney Taylor submitted that the act of parliament did not apply to the present case, inasmuch as the jury had acquitted the prisoner of the offence with which he was charged, by negativing the fact that the pistols were loaded with bullets.

The Attorney-General contended that if the contents of the pistols were discharged at the Queen, the overt act laid in the indictment was sufficiently supported for the purpose of calling to the aid of the Crown the act of parliament in question, in order that the prisoner might be confined as a lunatic during the royal pleasure!

Mr. Sydney Taylor strenuously denied this paradox. The overt act laid was firing pistols loaded with leaden bullets; and the jury had declared that that fact had not been proved to their satisfaction; it therefore followed that an acquittal must take place. It was not fit or proper for the Attorney-General to endeavour to visit the prisoner with perpetual imprisonment, when the jury found him Not Guilty.

Lord Denman said the jury were under a mistake. They had not sufficiently applied their minds to the point, whether the pistols were loaded or not. They should retire to their room, and return with a verdict, saying, Aye or No, Did the prisoner fire a pistol loaded with ball at the Queen, for that, in truth, was the question at issue. The foreman of the jury said that they could not decide the point, because there was

no satisfactory evidence produced before them to show that the pistols were loaded with bullets. The jury were once more directed to retire, and return a verdict of Guilty or Not Guilty on the evidence.

The Attorney-General observed, it would be monstrous to suppose that a person like the prisoner should be again let loose on society to endanger the life of Her Majesty or her subjects.

The jury, after an hour's absence, returned their verdict: "Guilty, he being at the time insane."

Lord Denman. Do you acquit the prisoner on the ground of insanity?

Foreman. Yes, my Lord; that is our intention.

Lord Denman. Then the verdict will stand thus: Not Guilty, on the ground of insanity. The prisoner will be confined in strict custody as a matter of course.

The prisoner walked briskly from the bar, apparently glad that the tedious trial was over.

NOTE.

The Criminal Law Commissioners say, in their Fourth Report, "It will be perceived that the language of 5 & 6 Vict. c. 51. s. 2., would extend the punishment of whipping to the case of female offenders. We presume, however, that it cannot have been intended to alter the law on this subject as contained in 1 Geo. 4. c. 57. s. 2., which enacts 'that from and after the passing of this act, judgment or sentence shall in no wise be given or awarded against any female or females convicted of any offence whatsoever, that such female offender or offenders do suffer the punishment of being whipped either publicly or privately.'" It is to be hoped that no female will attempt, by shooting at the Queen, to solve in her own person the present perplexity.

THE TRIAL

OF

JAMES STUART, ESQ.,

BEFORE THE HIGH COURT OF JUSTICIARY AT EDINBURGH,

FOR KILLING SIR ALEXANDER BOSWELL IN A DUEL,

On Monday, June 10. 1822.

Judges Present: The Right Hon. David *Boyle*, Lord Justice-Clerk, Lord *Hermand*, Lord *Succoth*, Lord *Gillies*, Lord *Pitmilly*. (Lord *Meadowbank* did not attend.)

Counsel for the Crown: Sir William *Rae*, Bart., Lord Advocate, James *Wedderburn*, Esq., Solicitor-General. Mr. Duncan *M'Neill*, Mr. Robert *Dundas*, Advocates-Depute.

Counsel for the Pannel: Mr. Francis *Jeffrey*, Mr. James *Moncreiff*, Mr. John A. *Murray*, Mr. Henry *Cockburn*, Mr. John *Cuninghame*, Mr. Thomas *Maitland*, Mr. William *Gibson*.

THE pannel took his place at the bar, accompanied by his relatives the Earl of Moray, Mr. Erskine of Cardross, and Captain Alexander Gordon of the Royal Navy, and by the Honourable Admiral Fleming.

The Prince Czartoriski, Lord Belhaven, the Hon. Henry Fox, and several other persons of distinction, sat on the bench with the judges.

The law of the land as written in our text-books, and the law as pronounced in courts of justice, have been for more than two centuries at variance upon the subject of duelling. The feelings of the man have sometimes subdued the stern duties of the magistrate, who in declaring the law has

permitted to escape his own antipathies against its being acted on; and juries, under the casuistical pretence of pious perjuries, have with prompt and loud voice pronounced verdicts of acquittal, in open contradiction to their oaths. The laws of both countries do not recognise the possibility of one man deliberately slaying another without malice being of necessity implied; this wilful killing in cold blood, be the antecedent provocation what it may, the law pronounces to be murder. Jurors, on the contrary, deny the existence of malice in the slayer where *the code of honour* has compelled him to call out his victim, and pronounce him guiltless of wilful homicide. The long series of judicial annals has not in consequence been darkened with a single conviction for murder in the case of a duel fairly fought. The bravo or assassin, who made the challenge a mere excuse for taking life by stratagem and stealth, has indeed been found guilty, and two or three verdicts of manslaughter have been recorded, where the facts left no doubt of the survivor having practised foul play. During the long reign of George III., which comprehended nearly sixty years, about 170 duels are known to have been fought, and in these between sixty and seventy persons were slain. In by far the greater number of cases, even though followed by death, the law did not deem it necessary to bring the survivor to trial, the event having been considered by the code of honour notoriously justifiable, and inevitable. To mark the leaning of the courts—how complete and well-established may be considered this conspiracy of judge, counsel, and juror against the law, it will not be uninteresting to pass under review some of the most remarkable cases that have formed the subject of judicial investigation. The majority of them were collected and commented on by Mr. Jeffrey in his admirable defence of Mr. Stuart.

One, and by far the most palliated, was an affair of honour, as it is called, in which a Scotchman, Major Campbell, was unfortunate enough to receive and undergo the sentence of death for a duel fought in Ireland. This is the most mitigated case that occurs in the register of convictions, but a strong and bad case. The parties had a quarrel, but separated afterwards for several hours; they were proved to be

cool and composed in the interval, especially Major Campbell; they met again, and though they were quartered at the time in a garrison where there were mutual friends who could easily have been collected, they met *in the night time, without seconds,* and in a private room. The sole evidence, therefore, against the survivor was, and could only be, the general account of the antecedent quarrel, and the words of the unfortunate deceased previous to his death; and on his statement the conviction proceeded. The party slain maintained that the duel was not fair, and said of his antagonist that he was a bad man, and knew that he had hurried him.

Another of the trials where the jury returned a verdict of murder, was a case of plain assassination. The parties met in the field, and when the one was going up to the other, apparently to salute him, or for some such purpose, he raised his pistol and blew his brains out. That man was tried, and most deservedly convicted, executed, and dissected as a barbarian and ruffian, undeserving of the privileges or name of a gentleman.

Of the other cases which were selected for prosecution, some few have issued in a conviction of manslaughter, and these are all uniformly of the worst description. The most notorious is that of Lord Byron, and resembles in its circumstances the affair of Campbell. The parties quarrelled, went out from a company of their friends into a room, *without seconds,* and by the light of a candle fought with swords, when one of them was mortally wounded; the survivor being suspected of drawing his sword and making a lunge at the other, before he had plucked his sword entirely out of the scabbard. His, therefore, was a very narrow escape; and, on a trial before the Lord High Steward, the peers pronounced it manslaughter, on which Lord Byron claimed his privilege of peerage, and was discharged, having undergone one day's confinement. The House of Lords have always been very tender of the honour of a peer when accused of murder in duelling, and, under the most aggravated circumstances, such as Lord Mohun's, have never adjudged the crime to be more than manslaughter, — a finding which subjected the peer to nominal punishment only.

There is one case very famous, as being the first of those occasions in which judges admitted from the bench the necessity and expediency of juries tempering the law where, by a stern necessity, they have held themselves bound by it; that of Mr. William Poe Purefoy, for killing Colonel Roper in a duel. Purefoy was a lieutenant in the regiment of which Colonel Roper was the colonel. The young gentleman had been guilty of some excess when engaged with his friends on a festive occasion, which called forth a pretty severe reprimand from the commanding officer. This was resented by the former in such unmeasured terms, that Colonel Roper was under the necessity of bringing him before a court martial, who found the charge proved, and sentenced him to be dismissed from the army and rendered incapable of serving. That sentence being confirmed by the proper authority, was read at the head of the regiment in Lieutenant Purefoy's presence, and carried into full effect. After this he came up to the colonel, and told him that he was a coward, a ruffian, and a scoundrel. The colonel answered he had nothing to say to him, and turned on his heel. The same day Mr. Purefoy met him again, and said, "Do you now agree to meet me?" At the same time he shook his whip over his head, adding, "This is an earnest of what you may expect," and posted him. After some consultation, Colonel Roper was advised, as Purefoy had ceased to be in the army, and held the rank of a gentleman, that it was necessary to send a hostile message. They accordingly met, and Purefoy shot Roper dead on the field.

The trial came on before Baron Hotham at Maidstone, in the year 1794; and that learned person, after summing up the case, spoke as follows: —

"It is now a painful duty which jointly belongs to us; it is mine to lay down the law, and yours to apply it to the facts before you. The oath by which I am bound obliges me to say that homicide, after a due interval left for consideration, amounts to murder. The laws of England, in their utmost lenity and allowance for human frailty, extend their compassion only to sudden and momentary frays; and then, if the blood has not had time to cool, or the reason to

return, the result is termed manslaughter. Such is the law of the land, which, undoubtedly, the unfortunate gentleman at the bar has violated, though he has acted in conformity to the laws of honour. His whole demeanour in the duel, according to the witness whom you are most to believe, Colonel Stanwix, was that of perfect honour and perfect humanity.

"Such is the law, and such are the facts. If you cannot reconcile the latter to your consciences, you must return a verdict of guilty. But if the contrary, though the acquittal may trench on the rigid rules of law, yet the verdict will be lovely in the sight both of God and man."

Baron Hotham, if correctly reported, allowed his kindly feelings to master his judgment. The jury instantly acquitted the prisoner.

Then came a remarkable trial, one of the few that have been reported at some length, that of Captain Macnamara for killing Colonel Montgomery, in which the grand jury had found a bill for manslaughter. It was a case of a foolish dispute about two dogs which accompanied the gentlemen when riding in the Park; the dogs having quarrelled, Colonel Montgomery, who did not perceive that Captain Macnamara was near, came and separated them, and said, "Whose dog is this? I will knock him down." On which Captain Macnamara rejoined, "Have you the arrogance to say you will knock my dog down! you must first knock me down." An altercation took place. Colonel Montgomery and his party rode up through Piccadilly, and Captain Macnamara following him, sent a friend immediately with a message. They met the same day, and Colonel Montgomery was shot dead on the spot.

The defence in this case was prepared by Mr. Erskine, who appeared as his counsel, but was not allowed by law to address the jury. The defence which he prepared was one which few British juries could resist. He states, "I am a captain of the British navy. My character you can only hear from others. But to maintain any character, I must be respected. When called upon to lead others into honourable danger, I must not be supposed to be a man who sought

safety by submitting to what custom has taught others to consider as a disgrace. I am not presuming to urge anything against the laws of God or of this land. I know that, in the eye of religion and reason, obedience to the law, though against the feelings of the world, is the first duty, and ought to be the rule of action; but in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowances for my situation. It is impossible to define in terms the proper feelings of a gentleman, but their existence has supported this happy country for many ages, and she might perish if they were lost." The jury instantly acquitted him.

Lieutenant Sparling made the same successful defence when tried at Lancaster for the murder of Mr. Grayson in a duel. That gentleman had expressed publicly his intention to chastise him as a villain and a scoundrel for having broken off an engagement with his niece. Mr. Sparling concluded his address to the jury with much feeling. "It is with you to return me unsullied to society, or to consign me to the grave. I trust, however, there is not one of you who does not feel for a man in my situation. Against the deceased I could harbour no ill will, for we were strangers to each other; but do you think I could see my character destroyed, my honour injured, my hopes ruined, my expectations blasted, and myself abandoned by all? Better would it be to die than to live forsaken by my friends, shut out from my wonted society, degraded, insulted, despised, and forsaken."

The prosecution had been conducted by Serjeant Cockle with great asperity, and Mr. Justice Chambre cautioned the jury against suffering their minds to be in the smallest degree affected by any thing that might appear to be declamatory or pathetic, or by any force of action or gesture made use of to support the prosecution. The judge added that he stated the law with great pain, that he wished he could have stated that affronts of the nature Mr. Sparling had received would have been an extenuation of the offence, but it was not in his power, consistently with his duty, so to state. "If you are dissatisfied with the evidence that Mr. Sparling did commit the act which deprived Mr. Grayson of his life coolly

and deliberately, and if, *as I heartily wish you may*, you may be able to observe any circumstances which will warrant you so to think, you will acquit him." Seventy-two witnesses, the number necessary by the ecclesiastical law to convict a cardinal of the crime of incontinence, would not have sufficed to satisfy the jury after this hint, and in twenty minutes they returned with a verdict of "Not Guilty."

There is a singular case, of Sheppard, tried before Sir Henry Russell, the recorder of Bombay, which issued in a verdict of manslaughter, though, if there be any authority in law for a concerted duel being a crime, it is either a murder or no offence at all. It is as much a departure from the authority of the law to find manslaughter, as to find it no crime. This, however, was an aggravated case. A quarrel took place between two officers in garrison, who chose to go out, after a long delay, several weeks having been spent in the exchange of notes in the dark, and to fight by the light of a lantern held by a black servant between them, without the inspection of a single European; no witnesses were present. The offence of the party who suffered was of a very vague description, only one person saying that he thinks he had heard Captain Phillips speak lightly of Sheppard on some occasion or other. On this provocation the challenge is given, the parties fight alone (for the black servant was not permitted to give evidence) in the dark, and Captain Phillips is killed on the spot. The boldness with which the judge spoke out (what all judges in their hearts must feel) is remarkable.

Sir Henry says, after stating that the crime of killing in a duel is murder: "At the same time, in compassion to human infirmity, courts of law and juries have been in the habit of making great allowances for the circumstances in which persons called upon to fight a duel may have been placed. When a fellow-creature is put to death from motives of deliberate malice, the law pronounces the crime to be murder. When the same act is committed under the immediate influence of violent passion, it is merely accounted manslaughter. Now, in the case before you, it will be for you to consider whether the present circumstances of society,

as applied to a gentleman and a soldier, do not take away the particular character of malice from the crime. A man is placed in a situation where, if he does not go out to fight a duel, he has no prospect before him in life, but that of contempt and ignominy. Surely the feelings which are inseparable from such a situation may be supposed to deprive a man of self-possession and self-command, as well as a violent gust of passion. And I see no reason why the law should deny, nor do I believe that the law does deny, the same indulgence to those feelings, that it yields to a brutal impulse, which it is the chief object of all human and divine institutions to control. In declaring this opinion, I believe I go farther than most judges have done, but I have not formed it without mature deliberation, and I think it places the question of law in cases of duel, upon more stable and more tenable grounds, than the shifts and artifices which have been so generally resorted to."

The plain speaking of the Indian judge was exceeded by Baron Smith, in a case in Ireland, which attracted much attention at the time, the trial of Alcock, in 1808, in which that humane judge pronounced a very strong judicial opinion. It was a case of a duel between two candidates for an Irish county, where a pretty warm canvass was going on. Tenants to a certain amount, 40*s.* a year, had then votes in Ireland. But, holding their lands by very precarious tenures, they voted in general with their landlord. One of these gentlemen had gained the interest of a certain landlady (for a lady was the proprietor), and he therefore reckoned upon the tenants. The other candidate, however, was more popular, and the tenants were rash enough to tender him their votes. The offence of the gentleman who fell was that he allowed them to vote for him. The names of the parties were Colclough and Alcock. Alcock was the survivor, Colclough fell; Colclough had these votes tendered to him. Alcock, on finding this, came and remonstrated, in very warm terms, on the impropriety and indecorum of such a proceeding. Colclough protested, in the most solemn terms, that he had not solicited these votes. Alcock insisted that they should not vote for him. "How can I prevent them?" said Col-

clough. After some words, Alcock said he must have satisfaction; a meeting was arranged, and they fought, certainly before a plentiful audience, for most of the voters attended, so that there might be four or five hundred spectators. Mr. Alcock put on spectacles before firing, which it was proved he did not at all times wear. This was remonstrated against by the second of the other party, but persisted in, as he could not see his father at that distance. ("By the way," said Mr. Jeffrey, in reporting this trial, "it would be no great misfortune not to see one's father in such a situation.") They then fought, and Colclough was shot dead the first shot. This case, which created a great, and perhaps very reasonable, sensation, came to be tried at the Wexford assizes.

The learned judge, after observing that, in the earlier part of the circuit, there had been many capital trials, which had excited no interest or attention, remarked, "How different is the case of the charge we are now trying? Yet strip it of the trappings and aggravations with which I know not whether party zeal, or a more justifiable motive, has sought to clothe it, and what does it amount to? To a transgression with which we must, on the one hand, confess ourselves to be almost as familiar, as we must, on the other hand, admit it to be highly culpable and illegal. Two persons disclaiming and violating the municipal law, prefer paying obedience to a false and mistaken code of honour; and one of these disclaimers falls in a premeditated duel, forbidden by the law of the land, but which the erroneous system of punctilio, to which I have adverted, enjoins in some instances, and permits in many more. No sooner has this melancholy catastrophe taken place, than the friends of the deceased commence a vigorous prosecution against the causer of his death. But some of these prosecutors, we may presume, we even know, to have themselves been present, aiding and assisting, at the perpetration of what they now represent to have been murder; and, in strictness of law, their representation is a just one. Some of those prosecutors we may conceive to have at one time been desirous that their champion should inflict the death which he has suffered; should do the very act for

which they now prefer a capital indictment. If, abjuring the code of honour, and adhering to the rules of that law which we are here assembled to administer, the prisoner or the deceased had declined to send a message, or been tardy in accepting one, we may doubt whether these strenuous assertors of the law would not have scorned to associate with such strict observers of it, and rewarded their pacific conduct with indelible disgrace. Thus on the object of their blame a hard alternative might be thrown, of being posted as a coward or indicted for a murder."

Then, after some remarks on the details of the case, Baron Smith closes his address, most appropriate to the feelings of the country where it was delivered, with this eloquent but most unjudge-like exhortation: "However much and justly such combats are to be blamed, you may more abhor the sanguinary notions which produce them; and pity the victims of a law of opinion, which you strongly wish to be repealed. You may have sons, you must have friends and relatives yourselves, and will be disposed to ask this question of your consciences and hearts, whether the pride and infirmity of human nature might not lead you to wish that these would rather violate the law, than endure the scorn and contumely of (Heaven knows) an unsparing world, or incur the slightest stain or blemish on their honour! You will wish to give the prisoner the benefit of these reflections; but whether you would be warranted to do so, is what I scarcely dare inquire, otherwise than by suggesting cases, which I conceive to be similar in their legal nature, for the purpose of illustrating and explaining your duties here.

"If an officer at the head of his regiment be called a coward and a scoundrel, and instead of cutting the offender down, challenge and kill him in a duel, he is a murderer by law; and if you are bound to find the prisoner Alcock guilty, you will be equally obliged to return a verdict of conviction against a gallant officer, under the circumstances which I have described. Yet, on the other hand, the military punishment and intolerable disgrace which must inevitably follow from his submitting to the affront, it cannot be necessary for me to dwell upon. If an aged, an infirm, a beloved, and

respectable parent be insulted and reviled, or even struck and beaten in the presence of a son, and this latter happen to kill the assailant in a duel, the transaction will be murder; and, if you cannot acquit the prisoner, you could not acquit the child. If a husband find his wife in the embraces of another, and kill him unarmed and unresisting, this is manslaughter of the lowest and most venial kind. But if, giving the adulterer further time for preparation, and a fairer chance for his life, he puts arms in his hands, and meets and kills him in a duel, the offence, altering its character, becomes at once murder; and if you are bound to convict the prisoner here, you would be also bound to a conviction in the case which I have supposed. Not because in morals the criminality is equal; but because both offences are murder in the eye of the law. But let me ask of your consciences and your hearts as men, could you convict the officer, the husband, or the son?

"I will not repeat, lest I might seem to inculcate, the austere doctrine of the law. In once stating it, I conceive that I have sufficiently discharged my painful duty. Nay, even sitting where I do, I think myself warranted in doubting whether this doctrine is not a sort of anomaly in our code; existing in theory, almost abrogated in practice, by the acuteness of the judges, the humanity of jurors, the mercy of the Crown. This, Gentlemen, is all I have to say. The evidence is before you. If you believe it, you have heard its legal results from the bench. You have the law of the land bearing witness against the prisoner on the one hand, the law of opinion on the other, endeavouring to excuse him; the one prescribing rigour, the other suggesting mercy. It is for you to pronounce which call you will obey! The trammels of my office forbid my adding more. But there is another, a far better voice than mine, to which, though I be silent, you may listen still. I mean that 'still, small voice' of which you read in Scripture, and which addresses itself to the consciences of good and pious men in the soft and soothing accents of clemency and peace. Its dictates may be followed with a confidence the most explicit. It is the voice of Him who cannot err,—who cannot lead His creatures into error,—

who, to justice without blemish, can unite mercy without bounds,—who, all criminal as we are, can acquit us, and yet be just. To the influence of those secret and divine monitors, and (as far as human infirmity can follow) of this divine example, I surrender you, and commit the care of the prisoner at the bar. I wait with some anxiety and much impatience for your verdict. Judge, then, whether I am impatient for a capital conviction."

The jury, in one moment, acquitted the prisoner.

This charge, however honourable to the kindly spirit of the man, was scarcely worthy of the magistrate, bound by an oath to administer, not make the law, and forms a striking example of the truth of Lord Eldon's saying, that "a judge ought never to be eloquent." In a country where some of the judges and a majority of the counsel had fought each his brace of duels; where statesmen, members of parliament, lawyers, physicians, and country gentlemen had measured their twelve paces, the stern dictates of the law ought rather to have been urged than vilified.

Far more in accordance with judicial duty was the summing up of Mr. Justice Buller on the trial of the Rev. Bennet Allen and his second for killing Mr. Dulany in a duel. They had fought about ten o'clock at night in Hyde Park at the distance of eight yards, the *Rev.* Mr. Allen having put on his spectacles. The judge there told the jury plainly "they were bound to adhere to the law, as to which there never has been a doubt. In the case of a deliberate duel, if one person be killed, it is murder in the person killing him. Of that proposition of law there is not, there never has been, the smallest doubt. Sitting here, it is my duty to tell you what the law is, which I have done in explicit terms; and we must not suffer it to be frittered away by any false or fantastical notions of honour. If you see the facts in this light, you will be under the necessity of finding the prisoners guilty; and whether the circumstances of the case are such, as may admit of any indulgence or mercy hereafter in the case of both or either of the prisoners, it is not for us to decide; but must be left to the wisdom and the judgment of that power, in which the constitution has placed the right of sparing either life or punishment, as it sees fit."

The jury, after such a charge, could not venture to acquit altogether, but temporised between their consciences and wishes by acquitting the second, and finding the principal guilty of manslaughter. He was sentenced to six months' imprisonment, and escaped certainly with less punishment than he deserved.

In a more recent trial, the intrepid honesty and severe rectitude of a judge as able as Sir Francis Buller, and more humane, Mr. Justice Patteson, was remarkably manifested. Dr. Hennis had been killed in a duel with Sir J. Jeffcott, and the seconds were tried at Exeter on the charge of murder, the principal survivor having absconded. At whatever cost of private feeling, Mr. J. Patteson would not shrink from expounding and enforcing the law. "The malice aforethought meant, is that species of malice which arises by implication, when people go out to commit an unlawful act, and death ensues in consequence. As far as manslaughter is concerned, the question here will be merely whether they had time to cool. These parties were never hot. Whether duelling ought to be tolerated in this land, I say nothing. It is no question for any jury at all. The law of the land does not tolerate it. I repeat, if you are satisfied on this evidence, that the three gentlemen went out to Haddon, knowing that Sir J. Jeffcott and Dr. Hennis were about to fight a duel there without heat or irritation, but deliberately aiding and assisting the affair on a point of honour, after vainly endeavouring to effect an amicable arrangement, I cannot tell you, in point of law, it is anything short of murder."

The Judge had done his duty, and the jury thought they did theirs in at once acquitting the prisoners.

In recurring to Scotland, it is a remarkable fact that there is no instance for 150 years of any conviction for fighting a duel in that country, though some of the prosecutions presented features far from favourable to the prisoners, especially the trial of Macdonell of Glengarry. Some little dissension occurred at a ball and supper in the North, between Glengarry and Lieutenant M'Leod, and it was the opinion of all the witnesses that the latter gave no cause of offence. Glengarry imagining, however, that he had, and being of a passionate temper, indulged in the most unpardonable excesses.

This young gentleman, wearing the uniform of an officer, and in the public ball-room, was accosted in the most violent terms by Glengarry, on account of some fancied insult, such as that he imagined M'Leod gave him an impertinent look. For this cause, Glengarry struck the unoffending young man with his cane, kicked him with his foot, and drove him in disgrace out of the room. A challenge ensued, and the parties met. Here, undoubtedly, by the advice of his respectable second, and with the help of his restored reason, Glengarry did confess the frightful excesses into which he had been hurried, and offered any apology,—any atonement which was not inconsistent with the character of a gentleman. A condition was insisted upon, to which it was certainly hard, and perhaps impossible, for any gentleman to submit. The young man was advised to accept of no verbal atonement, unless Glengarry should put the whip with which the disgrace had been inflicted into his hand, and leave it to him to retort or not, as he might see cause. After much discussion the terms were rejected. Glengarry went out; he did not fire wide of his mark, or in the air, but fired into the bosom of the young man, and his life fell a sacrifice in a short time after. After a long and elaborate defence, the jury found the prisoner Not Guilty. They accompanied this verdict with an explanation of the grounds of it, which has very properly been preserved. "The Chancellor of the Jury stated, that he was desired by them to explain to the Court, that the sole ground on which the verdict proceeded, was the anxious desire latterly manifested by the pannel and his friend Major Macdonell amicably to settle the matter, and to prevent proceeding to extremities by making an apology, as the jury highly disapproved of the pannel's conduct at the beginning of the unhappy dispute: and it was fortunate for him that the duel did not take place so soon as intended, before any attempt was made to apologise, as in that case it was highly probable that they would have returned a different verdict. At the same time, it was proper to observe, that the jury had no idea of finding by their verdict that what is called fairly killing a man in a duel, could afford by itself any defence against a charge of murder." And of this explanation the Court distinctly approved.

The last case in Scotland previous to the trial of Mr. Stuart

occurred in 1811, and arose out of an unfortunate quarrel between two young men, one the military surgeon and the other a captain in the same regiment. There too, though the character of the survivor, as well as that of his victim, appeared to be highly honourable, the cause of quarrel originated with him. He gave the first offence, and to the last refused to make any apology. Some trifling dispute arose at the mess, on account of Cahill having, contrary to their regulations, carried the file of a newspaper to his own room when unwell. He laughed at the matter, when informed of it by a friend of Captain Rutherford, and said that the complaint must have arisen from personal pique: upon being pressed to explain his meaning, he said, "I don't mean to say any thing covertly, I believe Rutherford has a personal pique against me." Rutherford naturally took this amiss, and no satisfactory explanation being offered, the parties the same evening went out, with two very young men as their seconds, to a quarry in the neighbourhood, or some such miserable place. At that time many opportunities were given the young man there, but he would not apologise. They fired, and Rutherford was shot. Cahill was brought to trial, and the Lord Justice-Clerk said he would detain the jury but with a very few words. "This was a case of a very distressing and afflicting nature. It was particularly distressing to those engaged in its determination; for it was impossible to disguise the truth, that the manners of the times and the feelings of the people were here in direct opposition to the law of the land." His Lordship considered it his bounden duty to tell the jury that there could be no doubt as to the law of Scotland, which declared that where one man killed another in a deliberate duel, this was as much to be regarded a homicide, as if the deceased had met his death in any other criminal way. There being no doubt as to the law, there would in any other case be as little as to the verdict. But it was impossible not to see that there were circumstances which left a doubt. These circumstances were before the jury, and it was for them to judge whether the law was applicable to this case, and whether they would strictly carry it into effect.

A verdict was pronounced, finding the pannel, with two dissentient voices, Not Guilty; upon which the presiding judge said, "Gentlemen, you have given a verdict such as was to be expected on the occasion."

To prevent the continuance of this apparently interminable conflict between the law of public opinion and the law of the land, the commissioners on criminal law, in their second Report, 1846, have suggested a modification in the severity of the common law; and propose that in future, by statute, "Homicide shall be extenuated where, if two persons deliberately agree to fight, a contest ensues, and one of them is killed. Provided that if such contest be with deadly weapons the party killing shall incur the penalties of the second class." The reasons of the commissioners for this change are ingenious and plausible, but far from convincing or conclusive.

"We think that homicide by consent ought to be extenuated, not on the ground that '*volenti non fit injuria*,' which maxim, we conceive, ought to be limited in criminal cases where life is sacrificed, but we consider that, in cases of homicide by consent, circumstances are wanting which are the principal grounds for punishing murder with death; namely, the alarm which murder spreads in society, and the inability of individuals to protect themselves against this species of injury.

"One evil ingredient of the utmost importance is altogether wanting to the offence of voluntarily culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view. One end is, that people may not be murdered: another end is, that people may not live in constant dread of being murdered. This second end is, perhaps, the more important of the two. For if assassination were left unpunished, the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent.

"An evil ingredient in the crime of murder, of great im-

portance, is wanting to the offence of duelling. Death by duelling does not, like murder, spread alarm through all ranks of society, from the highest to the lowest. The grounds on which the extreme measure of capital punishment, in cases of murder, seems justifiable, are, first, to prevent the severest of personal injuries; and, secondly, to prevent people from living in constant dread of being murdered. It is obvious that, in the case of duels, the danger is confined only to the higher class of society; and, what is of more consequence, no one need be in dread of dying by such means, unless he chooses to enter into a voluntary compact to violate the law. As the punishment for murder is not grounded on the Jewish law, nor on our moral or religious horror at the act, but on its prejudice to society, and chiefly on the insecurity and alarm it occasions, it appears to us that there is not an adequate cause to justify the taking away of life, where death occurs in the instance of two persons voluntarily agreeing, according to certain stipulated or implied rules, to give each other an opportunity of killing his antagonist.

"It seems to us that the present law is shown to be ineffectual in repressing the practice, and that its effect is to afford immunity to duellists. Thus, Mr. Alison, in his 'Principles of the Criminal Law of Scotland,' observes, that 'such has been the natural and human sympathy, both of courts and juries, with the alternative to which the best men are often reduced—of fighting a duel or losing their place in society, that there is hardly an instance, for a long period, on our records, of a capital sentence being pronounced on such a charge, if there was nothing savage or dishonourable in the conduct of the accused.' And after mentioning by name a variety of cases in which fatal duels had been fought, and in which the Judges had laid down the law, that death by duelling was no other than murder, says, that, nevertheless, 'successive verdicts of Not Guilty were delivered by the juries.'

"In Eden's Principles of Criminal Law it is stated:—'I have not found any case of an actual execution in England in consequence of a duel fairly fought.' The reluctance of witnesses and juries to take any part in the capital conviction

of a person who has been engaged in a fair duel, especially if he may have received grievous provocation, or been the party challenged, must have been manifest to persons who have been present at trials of this description. And there have not been wanting examples of persons of high station and character tending to diminish the public odium of the offence of duelling.

"We are, for these reasons, of opinion, that, by abolishing the capital punishment in cases of duelling, not only will a just objection be removed from the law of punishing the offence with death, without due discrimination between that offence and other cases of murder; but a great stigma in our criminal jurisprudence will be taken away—that of leaving a very serious injury to society unrepressed, by reason of affixing a punishment for it, which it is found generally impracticable to put into execution."

However weighty these arguments of expediency may appear, the contrary opinion of the late Mr. Starkie, and the reasons which he urges for dissenting from his brother-commissioners, will be found to rest on higher considerations, and to be the sounder and more solid.

"I cannot concur in recommending the above Article, which constitutes the consent on the part of the party killed an extenuation of the offence. I conceive that, in point of religion and morals, the crime of murder comprehends the wilful destruction of a human being, whether it be with or without his consent.

"'It is,' (says Locke, 'Essay on Civil Government,' p. 347), 'out of a man's power so to submit himself to another as to give him a liberty to destroy him, God and nature never allowing a man so to abandon himself as to neglect his own preservation; and since he cannot take away his own life, neither can he give power to another to take it.' Again he repeats the just remark, chap. IV., sec. 23., 'Nobody can give more power than he has himself; and he that cannot takes away his own life, cannot give another power over it.' If this be just, if, according to the moral law, a party has no power to consent that another shall destroy him, it must be a grievous moral wrong that any other person should

destroy the consenting party, or even that his offence should be extenuated by such consent given.

"Such destruction is not, however, merely a sin, but a crime against society, of the most dangerous character to life. Insecurity to life is admitted to be an evil calling for the greatest severity of punishment against offenders; and I cannot but think that, were the question examined even on this ground alone, the result would be against the proposed alteration.

"The law could not be relaxed, even where consent was given, without considerably diminishing the general efficacy of the law as a moral, as well as merely penal, protection; and it is very questionable whether the change would not be attended with very serious diminution of protection to life, and increased apprehensions of danger. Experience leads to the conclusion that the practice of duelling is not controllable by mere penal laws. A party in a duel is usually influenced by one or other of two motives: he acts in a spirit of resentment arising from unredressed injury, or in deference to the law of public opinion. Where the law gives no redress for a severe injury to the feelings, as, for instance, a sister's dishonour by deliberate seduction, the brother, to satisfy his own revenge, or, it may be, in expectation of effacing the stigma on his family, has recourse to arms; and should he kill the seducer, although the criminal law may denounce him as a murderer, the law of public opinion views the offence very differently. Juries, in such cases, are influenced by considerations which the law cannot possibly estimate or recognise; and it is impossible that they should not be sensible that, however deplorable the appeal to arms may be, the practice is not without some degree of salutary effect, in restraining men from the infliction of severe wrongs and intolerable insults, against which the law can afford no adequate protection. Hence arises a wide and necessary difference between the penal law and the laws of honour and of public opinion, a difference which can never be wholly reconciled, although some approach to it may be made by extending the sphere of legal protection against injuries to the feelings, and which difference, when it prevails to a great extent, greatly weakens the effect of the penal law.

"The impossibility of preventing the practice of duelling by subjecting offenders to even the severest measure of punishment, does not, however, by any means warrant any legislative extenuation, except it can be founded on circumstances which the law can recognise, as in the case of grave provocation; the law cannot be moulded, for this purpose, to agree with the laws of honour or of public opinion, and where this cannot be done, the case must stand as though no ground for extenuation existed. It is used as an argument for extenuation, that the punishment for a very serious injury to society (by killing a man in a duel), is now impracticable, and it is assumed that the offence will be repressed by making the proposed alteration. I cannot accede to this opinion. I believe that duels arise from motives (to which I have already alluded) which are beyond the control of mere penal laws; and it seems to me to be probable that where juries would, under the influence of considerations such as have been suggested, evade, if possible, the conviction of a party to a duel fairly fought, where the offence was capital, they would give the same verdict, although the offence were punishable only with transportation. To inflict a slighter punishment by fine, or even a term of imprisonment, would be to trifle with so grave a crime.

"Whilst, as it seems to me, little good could be expected from the proposed alteration, it might, I think, be productive of much harm in a moral point of view. It would be understood to manifest an alteration in the opinion of the legislature as to the heinousness of the crime of homicide, and of course tend to diminish the efficacy of the law against it."

Founded on the law of God, the law of the land should remain clear and stringent, that whoever kills in a deliberate duel commits murder. The sanctity of human life would be impaired were this denunciation lessened, and the forfeit, for expediency's sake, commuted. The very good to be attained by the compromise with codes of honour would be temporary, for arguments of hardship on the consequences of conviction, and appeals to compassion against a gentleman being adjudged guilty of felony, and transported, it might be for life, would equally tickle the ears of credulous jurors, and be

listened to with as much avidity as the present topic of capital punishment. Let the law maintain its own independent, straightforward path, *irretortis oculis*, and, be the fluctuations in fashionable feeling what they may, continue, in its austere regard for life, unchanged and unchangeable.

In no trial was the infraction of its severity less deserving regret than in the case of Mr. Stuart, now to be presented to the reader. In none were there so many circumstances of extenuation; in none was the provocation greater, the character of the accused more amiable, or his conduct less obnoxious to reproach. Though he fully deserved that good fortune, Mr. Stuart was especially fortunate in the counsel who defended him, the warmth of their attachment as political allies and personal friends tinting and colouring their eloquent advocacy. In his elegant and subtle disquisition, Mr. Jeffrey exhausted every topic that could be urged in defence of, or as an apology for, duelling; whilst Mr. Cockburn spoke to the heart, and subdued even judicial firmness in descanting on the merits of his unhappy friend.

"Ille regit dictis animos, et pectora mulcet."

The indictment charged Mr. Stuart with having conceived malice and ill-will against the late Sir Alexander Boswell,—with having found, or pretended to have found, writings of his in the lawful possession of Robert Alexander, proprietor of the Sentinel newspaper, and carried them away, and then wickedly and maliciously challenged the writer to fight a duel,—with having met and murdered him, and afterwards absconded, and fled from justice.

Mr. Cockburn addressed the Court on the relevancy of this indictment with great animation; the warmth of the friend tinging his eloquence as an advocate. "He would not object to the technical style of the indictment, though containing statements and expressions which might have been spared with some respect to private feeling, and no detriment to public justice. The only and most earnest desire of the gentlemen at the bar was for a complete and full investigation of the truth. It was his duty to give such a statement

of facts, as would enable the Court to judge of the bearing and relevancy of his defences. And we think it the more necessary to give this statement now, because this is a proceeding which involves considerations to the party far dearer to him than his life; and your Lordships know that there are a variety of accidents which, before he may have an opportunity of bringing them forward again, may make the trial on the part of the public prosecutor break down. I hope that I am guilty of no impropriety, if I mention to the gentlemen summoned as jurymen that my statement is partly intended for them, and that they will indulge me by attending to the explanation which I am about to give.

"All the collateral and extraneous statements in the indictment, apart from the mere fact of the duel between the parties, are pointedly and most solemnly denied. If the light of Omniscience were let down on this affair, it would only show more distinctly that the gentleman at the bar had *no* malice against Sir Alexander Boswell; that he did *not* seek the ground of a quarrel with him; that he was actuated by *no* conscious guilt; that he did *not* abscond or flee from justice. . . . . He (Mr. Cockburn) would assume, but was not permitted to speak the sentiments of his friend and client, and freely admit that the unfortunate gentleman now no more met with his death at the hands of the prisoner. But, assuming the fact, this opens up the great question, Has the pannel (*anglicè*, the defendant) any legal apology for that effect, of which he thus has been the cause? I say that he has; that he is not guilty of the crime."

Mr. Cockburn felt himself constrained by two great disadvantages; that the affair was connected with topics of a public and party nature, most unfitted for the calm deliberations of a court of justice; that he "must trench upon subjects which could not, however slightly, be alluded to without almost dethroning reason. It is another grievous misfortune in this case, and one which the gentleman at the bar feels more poignantly than any stranger can, that justice cannot be done to the living without seeming to encroach on those charities which are due to the dead. I wish I could avoid this topic too, and that we could pass through the business of

the day, without casting even a shade of doubt on the memory of one whose unfortunate loss has occasioned this discussion. I am afraid that we cannot. But I trust that your Lordships will go along with me, and keep it always in remembrance, that, if we shall be obliged to charge that person with impropriety, we are most willing to ascribe it to indiscretion alone. Sir Alexander Boswell was gifted — sometimes a fatal gift — with great ironical powers; and naturally felt prone to exert those peculiar talents on which he had staked his reputation. He launched his poisoned shafts at the defendant, who, though styled in this indictment, somewhat unceremoniously, James Stuart, is directly connected by blood with some of the noblest and most ancient families of the land; lineally descended from that great statesman whose history adorns the name and the house of Moray, the Regent Murray. Accordingly, I perceive at this moment that he is supported, in this his day of tribulation, by the present possessor of the honours and fortune of that family, who has chosen to forego the privileges of the peerage, which would have given him a place beside your Lordships, and, with great manliness and good taste, has rather preferred to sit at the bar with his relative and his friend.

"Nor is the personal character of the prisoner unworthy of these high and hereditary honours. This is a theme on which it is far better for the witnesses to speak than for me. But I must say, that if it fell to the lot of any person to be reduced to the necessity of proving his personal character, there is no man beyond these walls, — aye, there is no man within them — who could get a more beautiful character, from a greater number of disinterested and spontaneous witnesses, — all tendering their services, from the ranks of his political adversaries. If he has any quality more distinguishing than another, it is that of peacefulness. Unfortunately, a newspaper was started in Edinburgh in the beginning of January, 1821, called the 'Beacon,' and soon after contained a gross personal attack on Mr. Stuart. That affair was settled between him and a person of the name of Stevenson. Both parties were bound over to keep the peace, and no stranger had a right to intermeddle in their quarrel.

There appeared afterwards in that paper a series of other attacks (which, for his own sake, I wish the deceased had never seen, because I shall show how he adopted them), couched in language which is a disgrace to our age; Mr. Stuart's name being directly coupled with the word dastard —with that of bully — sulky poltroon — coward — despised. He applied for protection to the sheriff of Mid-Lothian, but that gentleman declined to grant an interdict, lest he should interfere with the liberty of the press; and Mr. Stuart saw himself set up as a target at which every base libeller might shoot. When he applies to legal authority for protection, the answer is, — 'Protect yourself; I will give you none.'

"The Beacon was, however, extinguished; and another newspaper, the Sentinel, set up in Glasgow, in a different city, — by different men, with whom Mr. Stuart had no quarrel, no connection. Yet, in the very first number of this paper, all the previous calumnies against Mr. Stuart are purposely and deliberately adopted. In that very first number I find it said of a gentleman, who has in his veins the purest and noblest blood in the country, and who at that moment was admitted to the society of as large a circle of friends as any man can boast of, — that he had *dishonoured the blood and the name of his family.* I find him accused by name of *meanness,* and called a *heartless ruffian;* and there is applied, not indirectly, but broadly, and without evasion, that intolerable word *coward,* — an imputation which, when it can be borne quietly, the character of a British gentleman is gone.

"For the purpose of proving that he was determined to resist that torrent of abuse, of which we have seen the first fountain, Mr. Stuart raised an action of damages; and in the answers he was, plainly and openly, in a court of justice, twitted, because he had not fought. The last article of Mr. Alexander's answer contains an appeal to men acquainted with the laws of honour; and the plaintiff's civil rights were thus attempted to be prejudiced by a reference to those very laws, for observing which he has the misfortune of now standing where he does: even when humbly mendicating justice from a court of law, it was to be got only under those odious allusions, which human nature must be changed before

it can bear. Other articles appeared in the Sentinel, envenomed by that spirit which gives sarcasm its edge, and by those powers which give it its lustre. These arrows struck the mark for which they were intended, and they cleft the heart they were directed against, though the quiver from which they came had not been discovered.

"At last, by chance, the unfortunate day arrived in which the author of these calumnies was to be detected. The agent for the printer of the newspaper, Borthwick, who was alarmed for his pecuniary safety, offered to save him by giving up the papers. Mr. Stuart went over to Glasgow to inspect them. Had he not adopted this course, the past numbers of the paper leave no doubt what construction would have been put upon his conduct. 'You *are* the *coward*, the *bully*, the *mean* man, the *heartless ruffian*, the *white feather*, the man *afraid of lead*, the man *afraid to draw a trigger*, the *poltroon* we called you; you talk of your character;—but you want a little money, it seems! because, when we put you in the way of getting honourable redress, you betake yourself to a civil action of damages, and let the author alone.'

"Mr. Stuart thus got the papers innocently.—But from that day to this, he has felt the weight of the discoveries which he then made. For though I believe he would rather have given his life than have made the disclosure which he did, against a gentleman with whom he was somewhat related,—with whom he had never been but upon good terms,—whose talents he had always admired; nevertheless, the melancholy truth was discovered, that his half-friend, *Sir Alexander Boswell, was the author of the worst calumnies against him.* He discovered enough to make himself satisfied; and I shall have no reliance on evidence henceforth, if the jury be not satisfied that Sir Alexander was the author of that '*Whig Song*,'—of the letter signed '*Ignotus*,' and of two or three other productions, in every one of which,—I do not say from malice,—I hope it was not from malice,—but from the sportiveness of an idle fancy, *he does apply the term coward to the name of Mr. Stuart,* without ever having received any provocation, or the smallest pretext for doing it."

He had been misinformed that Mr. Stuart had made him

the object of attack in another publication, and thus adopted the *lex talionis.*" What was Mr. Stuart to do after this? Was he to submit quietly? Was he not to speak? Was he to huddle up these papers, and go about the world with his diminished head marked with the word coward? No—he did what (with the exception of the Bench) there is not a man in the kingdom who would not have done. He called in the advice of able and honourable men: in particular, the advice of one relative and friend, whose counsel and support had been to him a great blessing.

"The Earl of Rosslyn, on reading these documents, saw at once that there was but one course to be followed. He sought and obtained an interview with the late Baronet, and made two propositions; in the first place, that if he would deny the calumnies were his, his simple assertion would be taken as conclusive against all evidence whatever. But he did *not* say that they were not his. I wish he could have said so; but he was a gentleman, and he knew he could not say so truly. Yet another proposal was made to him. 'Let us take it, Sir Alexander, as a mere bad joke. Say but you are sorry for it; that it was a squib; and that you had no serious intention of impeaching the honour or courage of Mr. Stuart.' I am sure that was a proposition as mild as the greatest peacemaker could possibly have made; and it was a proposition to which the party *might have acceded without the slightest imputation on his honour. Yet that satisfaction he refused.* He said, 'I cannot submit to be catechised. I will make neither denial nor apology.'

"Now, was a meeting possibly to be avoided after this? Both Lord Rosslyn and Mr. Douglas, the friend chosen to confer with him, held a meeting to be absolutely inevitable. Sir Alexander has left a letter, confessing the same necessary, and declared orally, that if they did not settle this matter by risking life, he and Mr. Stuart could not live together in this island. The affair being thus resolved upon, I need not state at length its details,—or, rather, I need not mention them at all. Mr. Stuart, so far from expecting to be the survivor, had made his preparations for death. I am as certain as I am of my existence, that when he stepped from his carriage to the

field, he firmly believed he was stepping to his grave. So the parties met, — they fired together, and Sir Alexander fell. Mr. Stuart no sooner found himself unexpectedly the survivor, and saw his antagonist at his feet, than he was instantly dissolved in all the tenderness of an infant. He was hurried away from the field. He came to Edinburgh; but, even amidst the agitation of that moment, he did not forget what was due to his name. He left a message in the proper place, which we really think might have saved the public prosecutor from saying, that after this fatal day *he fled and absconded from justice.* He directed Mr. James Gibson to leave word at the Crown-office, that whenever he was wanted, the public prosecutor might command his presence. He went to London, and from thence to France; and we have the two gentlemen here this day, with whom he was when he first received the intelligence that Sir Alexander was no more. These gentlemen will explain to you if he received it in the spirit of a man who was merely glad that he was himself safe, or with the temper of one who had any feeling of malice towards the deceased. They will tell you that they never witnessed so natural and so generous a flood of sorrow, for the ties which he knew that he had broken, and for the life which he knew that he never could recall.

"Out of these facts, the great question which your lordships will this day have to ask is, if the catastrophe of this painful affair is to be alleviated by a conviction of murder against Mr. Stuart? On the law of the case I have nothing to say, because it will come hereafter at a more proper time, and from an abler hand. But I may state in general, that I know that our law is rigid in its provisions for the preservation of life. I know also, that it is liberal in its presumptions of innocence, and in its sympathy with the infirmities of our nature; and that all its other maxims are levelled and absorbed in this great one, than no man *can* be guilty, whose mind is innocent. Is the mind of the pannel innocent of crime on this occasion? I have one fact more to state in illustration of that, and it is one which really forms a conclusive and impressive termination to all the apologies I have stated for Mr. Stuart. Sir Alexander Boswell, in reference

to this affair, consulted no less a person than a Supreme Criminal Judge,—a Judge of this Court,—that Judge who, to his honour, is not here to-day; and, in the letter which he writes to the brother of that Judge, he says, that, '*on consulting him, his Lordship tells me, I may depend on you.*' That is, a Supreme Criminal Judge prepared Sir Alexander Boswell for the meeting, by furnishing him with a second. If any one imagines that I state this to the disparagement of that judge, he is mistaken—I say it to his honour. It only proves that such was the inevitableness of the combat, that even a person best acquainted with the laws, and one professionally reared to reverence them, could not so far pluck his human nature from his breast, as to say that it was wrong.

"I know that, in the application of the law, it is sometimes thought due to the deceased, and to the interest of society, that offences of this kind should be visited with some punishment. But it is a sufficient check against the repetition of them, that the sufferer, before he engages in them, and ever afterwards, must be deeply punished in the quarrel, and in the event; and I therefore conclude by submitting that, instead of adding to the sufferings of him who has already borne so much, and who, let this case terminate as it may, is doomed to suffer so much more, the only legal, the only moral, the only appropriate conclusion of this day's trial must be a persuasion, that he acted under the operation of a great moral necessity, and that a verdict of Not Guilty is the result which will give most satisfaction both to the law and to all reasonable men."

The eloquence of the advocate had glowed the more vividly from the flame being kindled by the warmth of friendship. As soon as Mr. Cockburn had sat down, the Solicitor-General rose to say, that the pannel was entitled to the favourable benefit of the able and pathetic statement which had just fallen from his counsel.

At the instance of the Judges themselves, that part of the indictment which charged Mr. Stuart with the design of challenging "others of the lieges to fight a duel or duels" was directed to be struck out, as not pertinent to the issue.

According to the curious custom of the Scottish courts, the presiding judge then selected out of the lists fifteen jury-

men to form the assize. There were sworn amongst them three baronets, Sir A. C. M. Gibson, Sir John Hope, and Sir James Dalyell. Proud of the blood-red hand, they could not fail to sympathise with the feelings of a man of the world, and to consider the precept of a court of honour as binding on their consciences as the edicts of a court of law. The other special jurors were also gentlemen of consideration.

General the Earl of Rosslyn, the first witness adduced on the part of the prosecution, proved the case essentially as opened by Mr. Cockburn. The Lord Justice-Clerk accompanied his administration of the oath to him with an intimation that he might decline to be examined (having accompanied Mr. Stuart to the field as his second) if he thought fit. "My Lord, —Persuaded that your lordship must be acquainted with the privileges of the peerage, and considering that such a case as the present is new, and has never been brought under the deliberate judgment of the Court, and as the question arising upon it may depend upon another jurisdiction, the Court will leave it to your lordship's discretion what course you will think it fit to pursue in this case.

Lord Rosslyn. It is fit, under those circumstances, particularly after the honour your lordship has done me in thus addressing me, that I should state, that I am not aware that any thing in my situation as a peer should alter or affect my duty in giving testimony as a witness, when duly called on to do so in a court of justice; nor do I hold, as far as I understand, that any privilege belonging to that rank should prevent me from answering any questions which the Court may think fit to put to any other witness standing in similar circumstances.

Lord Justice-Clerk. Your lordship is called in this question only as a witness; and though ordinary witnesses are bound to answer the questions put to them, they are under the protection of the Court, and thus secured from being subject to be tried for any matter as to which they may have given evidence; yet, as your lordship, in a case of this nature, is not subject to the jurisdiction of this Court, you will judge what course you should follow.

Lord Rosslyn. I understand I am under the protection of

the Court the same as any other witness; so far am I under the protection of the Court that I cannot be called upon hereafter. I wish to explain, that I do not see any distinction that can be taken between a peer and any other person,—the protection of the law being granted to peers equally with other witnesses.

The gallant nobleman was then examined, and mentioned his interview. The alternative suggested by Lord Rosslyn could not, however, have been adopted by a gentleman. "I stated that if Sir Alexander could say that he was not the author of these papers, or had not sent them to the newspaper, such a denial on his part would be conclusive against any evidence." It was impossible the baronet could deny his writing, and equally impossible that he could say that he had no serious intention of reflecting on Mr. Stuart's courage. No gentleman could stoop to such a subterfuge, least of all a high-minded country gentleman, like Sir Alexander, however rash and misguided.

The cross-examination of Mr. Jeffrey proceeded on this assumption.

"Is your lordship, as a man of honour and of the world, aware of any punctilio, or point of honour, that could have prevented a person, standing in Sir Alexander's situation, from answering the question in the negative, if he could have done so with truth?—I am not. And I would not, for one moment, have hesitated to do so for myself. I should not have had the least hesitation in so answering the question.

If you had been the friend of any person to whom such a question had been put, and knew he was not the author, would you, in the circumstances, have advised him to declare he was not the author?—As the question was put, I would without the least hesitation.

Then may I ask your lordship, whether the declinature of Sir Alexander and his friend to answer the question, gave you the impression that their doing so was equivalent to an acknowledgment?—The declinature of Sir Alexander and his friend to answer the question gave me such an impression."

The parties met at ten o'clock in the morning, in a field, a sort of hollow dell, near the village of Auchtertool, beyond

the precincts of the county and city of Edinburgh, the parties having been bound over the night before by the sheriff in sureties to keep the peace. The ground was measured; twelve very long paces. Mr. Stuart raised his pistol very steadily, Sir Alexander fired in the air, both nearly at the same time; and Sir Alexander fell. Mr. Stuart had shown no rancour, but calmly submitted to an inevitable necessity. Lord Rosslyn's testimony was direct to this.

"From all that you saw of Mr. Stuart's conduct in the matter, from the first commencement to the last, had your lordship any reason to believe that he was actuated by hostility or vengeance to Sir Alexander Boswell, or merely by a desire to repair his injured honour?—From the whole of Mr. Stuart's conduct throughout the proceeding, the impression made upon my mind was, that there was no feeling of personal ill-will or resentment against Sir Alexander Boswell, but a deep sense of the unavoidable necessity of vindicating his own honour, more especially when it was assailed by a direct imputation of cowardice. He had not meant to take aim, and was entirely ignorant of his antagonist's intention to fire in the air."

Lord Rosslyn explained: "Mr. Stuart said to me at the moment I gave him the pistol, 'I think I ought not to take aim,' in which I agreed. I desired him to present his side and not his front.

Did they both fire at once upon the word?—There was a small difference between the two. Sir Alexander's pistol was the last, but it came very close upon the other.

Can you mark the time between the two, so as to give the jury a notion of it?—It was so close as scarcely to be distinguished.

Was it as close as this? [*Here Mr. Jeffrey gave two quick raps on the table.*]—Yes, I should think it was.

May I ask your lordship whether you had, at this time, any intimation, knowledge, or belief, that Sir Alexander did not intend to fire at Mr. Stuart?—Certainly not. I had no such intimation, knowledge, or belief. Such an intimation given to me must necessarily at once have precluded the possibility of a meeting, and would have amounted to an inti-

mation that it was Sir Alexander's desire not to fight. Such an intimation given to me would necessarily have precluded all proceedings, and would have amounted, in my judgment, to a declaration on the part of Sir Alexander that he did not mean to fight. It would have been quite impossible that I could have been a party to any proceedings after such an intimation.

The determination and secrecy were equally honourable to Sir Alexander Boswell, who had petulantly done a grievous wrong to Mr. Stuart, which his conscience could not justify. In firing at his person, he would have displayed malevolence; in making public his intention not to fire, he would have prevented that gentleman taking satisfaction. He had expressed his decision to his second, Mr. Douglas, before reaching the ground. "In the carriage, on the way from the North Ferry to the ground, he asked me as a friend, what advice I would give him as to firing. I answered, he was the best judge of that, and that he should consult his own feelings. He said he had no ill-will towards Mr. Stuart, — he had no wish to put his life in jeopardy, though in an unhappy moment he had injured him, — he bore him no ill-will; and, therefore, it was his determination to fire in the air. I expressed my approbation of his resolution to do so."

"When his wound was probed and examined, he turned round to me," continued Mr. Douglas, "and said he was very much afraid he had not made his fire in the air appear so decided as he could have wished.

"He had told Mr. Douglas decidedly not to give any hint whatever of his intention. He said it would be placing the other party in an awkward situation, and we all three agreed that no notice should be given."

The state of mental anguish in which Mr. Stuart was hurried from the fatal field seems to have equalled the bodily torture of his wounded foe, and was forcibly described by Mr. Gibson.

"At two o'clock on Tuesday afternoon, after the affair, when coming down St. Andrew's Street, I saw him coming out of my chambers; and, when he saw me, he turned short, and instantly ran up into my room.

What took place then? — I followed him as fast as I could.

I shut the door, and asked what had happened. He ran into a corner of the room, covered his face with his hands, and burst into tears. When he was a little composed, I again put the question. He said he was afraid Sir Alexander was mortally wounded. He was in the most complete agony of mind.

What did he say?—He said he had taken no aim. He wished to God he had taken an aim, for, if he had, he was certain he would have missed him; that he had never fired a pistol, on foot, in his life before.

Mr. Cockburn. Did you give Mr. Stuart any advice as to what he should do?—I said that he must instantly leave the country; that his remaining would only subject him to very unnecessary imprisonment.

Was he himself eager to go, or to remain?—He positively refused at first to go. He said, wherever he went, he would be miserable till he knew Sir Alexander's fate, and he would not go till he should know it.

He made it a condition of his going that you would give notice of his being willing to stand trial?—He did. Afterwards I met him at his own house, and the last words he said were, 'Remember to give notice that I shall be ready to stand trial.'"

A note was then read, which Mr. Stuart had written on the eve of the *rencontre*, to show how completely his own mind had foreshadowed the event as likely to be fatal to himself.

"If my senses remain, and I am not moribund, send as fast as possible for my wife, with all due caution. She is, of all her family, that one who would the least wish me to live with a dishonoured name.

"Hillside, Tuesday morning, March 26. J. S."

The libels were fiercely truculent squibs, as their author termed them, enough to burn to ashes fame, fortune, and life! The first verse of the song alluded to stot-feeder Stuart by name,—he added agricultural pursuits to his professional avocations— and the second scarcely needed Italics to make its satire sting home.

"Your knights o' the pen, man,
Are a' *gentlemen*, man,
Ilk *body's* a *limb* o' the law, man;
Tacks, bonds, precognitions,
Bills, wills, and petitions,
And *ought* but a *trigger* some draw, man."

Mr. Cockburn also read the letter signed Mark Todd, giving an amusing account of a late Whig festival and Radical rally, with this bitter sentence. "The Army and Navy were given, but not another fighting man, until the gallant and 'excellent Croupier,' Mr. Jeffrey, whom Lord Byron has celebrated for some bold exploit with Anacreon Moore (the seconds, no doubt, singing the beautiful air of 'Fly not yet'), arose and gave the health of Mr. JAMES STUART! Mr. James acknowledged, in grateful terms, the honour which he had RECEIVED from such a quarter. So now he has a FEATHER to stick in his cap, to bear the other company."

The article headed "The Late Lieutenant, James Stuart," was still more calculated to rankle in the wound.

Having resigned his troop on account of a dispute with the Lord Lieutenant, he wrote a vindication of his conduct, and was thus pilloried in print in the Glasgow Sentinel.

"This man of letters has printed a pamphlet, from which any one who will accept of it gratis, may learn that James Stuart was actually enrolled as a fighting man in the western troop of Fifeshire Yeomanry Cavalry. It appears that this heroic Lieutenant, contrary to a regimental order, called out the troop in which he serves for a drill, was reprehended, and tenders his resignation. The magnanimous yeoman has a threefold defence. The Captain's sickness, his own ignorance, and his exemplary conduct on the day *libelled;* for he states — and we believe him — that he was the *last* man to *retreat* from the Stuart's arms. Brother M'Culloch is a political economist, and, we understand, has *two* pupils; and he will bear us out in the assertion that every *thing* will find its own level. To raise the value of any *thing* by any *act* is hopeless. Hence the attempt of Lord Rector Jeffrey to give a *lift* to Mr. James Stuart at the Fox dinner was defeated by the laws of gravity; he might, with equal success,

have exerted his puissant powers to *lift* the celebrated fat ox of Dunearn.

"We noticed Mr. James Stuart as an active, everywhere busy, bustling Whig; — as a *publicised* character, who courted notice. It was under error that we noticed him at all, and we repeat our avowal of regret."

At first some question was made as to the MS. of these satires being in the handwriting of Sir A. Boswell, and questions addressed to Mr. Douglas on that supposition. In the result there could be no doubt of the real authorship; but Mr. Stuart evinced his anxiety during the discussion that nothing should be kept back or concealed. It should be remembered, in justice to the unfortunate writer, that he did not shelter himself under the disguise of an anonymous correspondence. He told Mr. Douglas that, when he wrote in the Sentinel first, he sent a letter to the editor, saying, that if any person came to ask who was the author of such and such articles that happened to have been written by him, if the inquirer said the object was a prosecution, the editor was not to give up his name, — but if the person said it was to call the author to account for it, the editor was then to inform his inquirer of Sir Alexander's name.

A letter written by Sir A. Boswell to his friend Mr. Maconochie was also called for, and read, after the expression of his hope, by the Lord Advocate, that the counsel for the defence would not insist upon it, as it was a private confidential letter. Mr. Jeffrey "could not, however, in justice to his client, dispense with the production of that important document, whatever regret he might feel at doing anything that could excite pain to the friends of the deceased, or doubt of the propriety of our conduct in the minds of the learned gentlemen opposite, whose good opinion he was anxious to possess. The letter shows that Sir Alexander considered himself as liable to the call he received, as bound to answer it, and particularly a call at the instance of Mr. Stuart, — that, at the time he wrote that letter, he contemplated the possibility of putting Mr. Stuart's life in hazard. And we therefore think it material to prove this, and to have the letter produced also, as another specimen of Sir Alexander's

penmanship, in order to complete the proof of the handwriting, and to show, *comparatione literarum*, that the other documents founded on are genuine."

The following part of this letter appeared very material: — "Last night, on my arrival, I received a letter from Lord Rosslyn, that he wished me to appoint an hour as early as possible, that he might make a communication to me; this, I suppose, is in reference to some of these squibs. I do not know who the offended party may be, but even if it should be Mr. James Stuart himself, I shall give him a meeting. In order, however, to obviate many of those circumstances which follow such transactions, I mean that the meeting shall take place on the Continent,—say Calais; and I wish to put your friendship so far to the test, as to request you to be my friend on this occasion. I saw your brother this morning, — and his lordship seemed to think that you would acquiesce. If I had deemed it expedient to meet my man here, John Douglas would have gone out with me; but, if I should be the successful shot, I should not like the after proceedings of our courts of law, and therefore wish to pass beyond their jurisdiction."

Nothing could be more complete than the testimony that was adduced to the amiable character of Mr. Stuart, extracted with extreme good taste from the lips of gentlemen who happened to be politically opposed to him. Lord Kinedder, the gentle friend of Walter Scott, deposed, "that for twenty years he had been very much connected with Mr. Stuart professionally and likewise privately, and certainly, in all his lifetime, never knew a more perfectly good-tempered, kind-hearted, amiable man, nor a safer companion."

Mr. Erskine expressed his opinion, "that Mr. Stuart had more of the milk of human-kindness in him than any person I ever met with. I never heard him make an ill-natured remark of any person in the course of my life on any occasion whatever." Mr. Walker added, "that the pannel was always more given to make up than widen breaches;" and his unfailing good temper was spoken to by his late partner and professional rivals. Character could go no higher; and, though troops of friends are sometimes mustered to attest, in

their hour of trial, the humanity of those who little merit such a proof of friendship, in Mr. Stuart's case there can be no doubt that the eulogy was deserved.

The Lord Advocate, in the discharge of what must have been a painful duty, contented himself with a very brief address. "He vindicated the propriety of the prosecution, of which, indeed, there could be no question; the invariable course being, when the life of any individual, however low, had been taken from him by violence, that the circumstances should form the subject of a criminal investigation. If this be a salutary practice in the general case, sure I am you will concur with me that this is a case in which such investigation is eminently required, where an individual has suffered, it certainly must be admitted, by illegal violence, where that individual was in the prime of life, the father of a numerous family, a zealous and active magistrate, a Vice-Lieutenant of a considerable county, a person gifted with talents and qualities alike useful to society, and to endear him to the circle of his private acquaintance. When such a person falls by violence, assuredly it is expedient for the justice of the country that the case should be investigated with minuteness. This, indeed, is right, independent of what is due to the justice of the country, — in justice to that unfortunate family, which has suffered a loss never to be repaired; right to the unfortunate gentleman at the bar, in order that the whole circumstances of the case may appear before the world, and that the whole guilt he has committed may be known; that its precise extent may be ascertained, or his innocence may be established, — that he may either suffer for the crime he has committed, or receive a verdict of acquittal at your hands for his innocence."

Where an individual had not conformed to the common practice of giving himself up and being examined judicially, it was the invariable course to introduce a statement into the indictment that he fled from justice. Still, the Lord Advocate regretted, in the present case, that the expression had been used. "The pannel had been allowed the privilege of seating himself at their bar without a moment's imprisonment. He had himself, as public prosecutor, endeavoured to act in as

liberal and fair a manner as was consistent with public duty. It was impossible for him not to state, with respect to the charge of murder, in the broadest and most decided terms, that that charge, according to every view of the law, has this day been proved most distinctly. Without reading any law books, he would state distinctly that a person going out deliberately to fight a duel, and killing his antagonist, cannot be allowed to state himself as in those circumstances of self-defence which entitle him to a verdict of acquittal.

"I must own, however, that juries have, and by possibility you may think yourselves entitled not to regard the law in that strict point of view; or, at least, that you may consider yourselves at liberty to go into the detail of circumstances which led to this unfortunate duel; and, holding yourselves not so much a court of law as a court of honour, determine whether, under all the circumstances, the individual at the bar is to be held as guilty or not. Now, I say that such considerations belong more fitly to a higher tribunal; and your strict duty does not entitle you to go into this investigation. But if you shall think yourselves entitled to go into this discussion, then I do state to you, that I think I discharge my duty in the manner most becoming and fitting when I say, that I have thought it my duty not merely to bring this prosecution, but to lay it before you, in all its circumstances, as fully as it was in my power. I have heard with much satisfaction the statement which was made in defence, and all the evidence which has been brought forward in support of it."

The Lord Advocate, in the performance of an onerous official task, might well afford to be brief, terse, and austere. Not so Mr. Jeffrey, whose arduous duty was, if possible, to ensnare the understandings of the jury, to throw doubts upon the law, to justify the appeal to deadly combat, and to elicit the safety of his client by brilliant paradox and subtle ratiocination. Those experienced jurymen, whose hearts only had been won by the pathetic pleading of Mr. Cockburn, could not well escape the spells of casuistry which this elegant and ingenious metaphysician wound around them; and if, perchance, the developement of his astute theory seemed cold and over-

refined when compared with the warm outpouring of his colleague,—

"Played round the head, and never touched the heart,"

there was great skill and forensic ability in the contrast, in bewildering such of the assize as neither pleading nor evidence had softened, and in perplexing that conscientious and stubborn integrity which the force of feeling could not subdue. "The anxiety with which he entered the Court," Mr. Jeffrey said, "had been very greatly diminished during the progress of the discussions; still he could not consent, for the sake of his client, to follow the example of the learned prosecutor, nor entirely discharge from his own mind those feelings of solicitude which the very brief but pregnant allusion contained in the address they had just heard, to the known and solemn authorities of the law, had certainly contributed in some degree to revive."

"After the character that has been given of the person at the bar, and the evidence that has been laid before you this day, all perfectly harmonious and consistent throughout, as to his general conduct and demeanour, I think I may say there are no *specialties* in this case that can justify any alarm on the part of his friends; and that the only point to which those who are entrusted with his defence need now address themselves, is that judicial sanction under which he has been said to lie, and out of the danger of which I think it will not be difficult to induce you to deliver him.

"The indictment sets forth,—and observe, Gentlemen, your verdict must find that it truly or erroneously sets forth,—'that the prisoner at the bar, *having conceived malice against the late Sir Alexander Boswell*, did, in the furtherance and for the gratification of that malice, seek out pretexts or occasions to challenge him to fight a duel; and that, on the day mentioned in the indictment, he did *wickedly and maliciously* discharge at him a loaded pistol, for the purpose and with the desire of taking his life, by which pistol his life was undoubtedly sacrificed.'

"This is the charge.

"To this charge he has pleaded Not Guilty; and, at the

same time, he, in the beginning of the trial, all but admitted, and now by my voice admits, that it is proved that he was the unhappy instrument of the death of that unfortunate individual. His plea of Not Guilty, therefore, which he now repeats, and trusts in with greatly more confidence than before the facts were disclosed, of course turns and hinges on this allegation, that though, unluckily, his hand was the instrument of Sir Alexander Boswell's death, he did not kill him *wickedly and maliciously;* but that his mind was pure from every spark of malignity, vindictiveness, or rancour; that he acted in this matter from motives totally unconnected with personal animosity; and that he ought now to be considered, not as having committed a great crime, but as having fallen under a great calamity.

"I apprehend I need not tell you, what is familiar to all of us who live in the atmosphere of this place, that the essence of all crimes, their criminal quality, consists in the motive and intention from which they proceed, and that there is no act, not even that of bereaving a fellow-creature intentionally of life, that has in it any criminal character arising from its merely physical description, of being injurious or painful to another. The guilt, and the whole guilt, of any act, so far as it can be described by its external characters, consists in the criminal and culpable motives and intentions from which it proceeds.

"It is only, therefore, rational and accountable creatures, who are presumed to be guided in all their important acts by reflection and choice, that can be called upon to answer for their conduct; and they answer, not for the acts themselves, but for the innocence of the motives or objects which they had in view in performing them."

Mr. Jeffrey must assume that each individual juror was convinced that his client went to the place of fatal rencounter without one atom of malice, hatred, or vengeance in his heart, and that he was actuated throughout, by motives not only not savouring of such feelings, but in their true character most directly opposed to them. Before, however, he could refer to this evidence, he must persuade them that that defence was admissible.

"We have been told, and certainly without any reference to authorities—which, however, I do not pretend do not exist—in general and comprehensive terms, that duelling, in any case, is an irrational, and barbarous, and pernicious practice; and that he who, for any cause, is unfortunate enough to take the life of another in a duel, is necessarily guilty of the aggravated charge of murder.

"I am not here to pass encomiums on, or to make an apology for the practice of, duelling; and yet I may be permitted to remind you that, on the occasions, almost the only ones, when we are called to consider the defences and views of parties who have engaged in such a practice, we are not generally in a situation to consider it very fairly. It is only when a lamentable accident has occurred, when precious and regretted blood has been shed, and when all our better feelings of sympathy and instinctive disapprobation of the actual violence that has occasioned the calamity are roused, that we are called upon to consider the nature of this extraordinary institution or practice of modern times. The actual evils of duelling are foremost and uppermost in our thoughts; but the evils which it tends to *prevent* entirely escape our consideration. It ought, therefore, in fairness to be remembered, that however awkward, however imperfect, however unequal and immoral a remedy it may appear, yet that, in point of historical fact, it has come as a corrective to greater immoralities, and a preventive of greater crimes. It is well known to all who are versed in history that, in point of fact, the practice of honourable duelling superseded the guilt and atrocity of private assassination; and that to this practice, pregnant as it often is with calamity and suffering in every form, we are not only indebted for the polish and refinement that belong to the members of our upper society, but for what is a great deal more valuable,—not only the high and general esteem in which courage and intrepidity are held,—but also the universal diffusion of fairness, manliness, forbearance, and handsome conduct among all the gentlemen of the land. The practice may indeed lead to the same results in one point of view, I mean in relation to bodily suffering, to which the unlimited licence which it has prevented and superseded sometimes led;

but the dispositions of mind which it creates, for the most part, and according to all modern experience, are totally the reverse. Even those who are most prone thus to expose their own lives, and those of others, are but rarely chargeable with any cruelty, ferocity, or quarrelsome disposition; and the truth undoubtedly is, that the practice itself has encouraged the growth of humanity, forbearance, generosity of sentiment, and the greatest caution and mildness of demeanour.

"That it affords a remedy for these crimes, and operates as a preventive to these atrocities, the history of those nations, where it prevails most and least, presents an obvious and conclusive testimony. In Spain, Portugal, and Italy, assassinations are daily occurring, poisonings, stabbings, the basest and most cruel murders. In those other countries, again, where duelling is an occasional but rare occurrence, and where it is called in only as an appropriate remedy for the affronts, vexations, and griefs, for which the law gives no redress, such atrocities are unheard of. In submitting it as matter of consideration for you as a general topic, whether a severe punishment of the survivor in duels, and the suppression of the practice, would not lead to worse consequences, I trust that in this country it would not lead to assassinations; but it certainly would lead to private and secret meetings held without witnesses, and without the means afforded to the parties of guarding against unfairness, or, what is as distressing and painful, the suspicion of it where it did not exist."

It is not difficult to detect the fallacy of this argument, that such a false theory of cause and effect must have been assumed by the adroit pleader with his gown and bands. The very period when assassinations were most rife in France, was the time when fatal combats prevailed; from the feelings of malice and rancour fostered by such constant and deadly appeals to arms, sprung up more dastardly methods of slaying, and blood-thirstiness was multiplied. There lurks also some inconsistency in the argument, that Mr. Stuart was entitled to an acquittal, because he had fought without one particle of malice; and that duelling itself was to be excused, because, if men could not thus gratify their animosities, they would be tempted to assassinate.

Mr. Jeffrey screened himself in some degree from this charge of inconsistency by submitting the proposition as a general topic, and insisting that he did not urge it as a necessary ground of his defence. "All I say, or wish you to remember, is *a fact* which I believe no person will be bold enough to contradict; and that is, that however irrational,—however immoral,—however objectionable, in many points of view, the practice of duelling may be in itself, it is a practice so established, and the necessity of which is so enforced by sanctions which no man can be expected to resist or defy, as to render, in certain circumstances, such an encounter inevitable to any gentleman. The unfortunate individual, who, in obedience to that sanction, exposes his own life, and the life of another, is not answerable for the justness or reasonableness of the institution itself. Authors of the severest and strictest morality, and of the deepest sense of religion, have given the high sanction of their authority to the lawfulness of such an act.

"I refer you to a work universally known, and which will carry down the name of the father of Sir Alexander Boswell to the latest period in the annals of English literature; I mean his memoirs of his illustrious friend, Dr. Johnson, a man certainly of the sternest morality, and most profound sense of religion, and who joined to both those high and severe attributes, perhaps the most vigorous understanding that was ever brought to the consideration of any moral question. It happens that Mr. Boswell himself concurred in the opinions which he reports as those of his illustrious friend;—and from what we have heard to-day, it appears that his son inherited these opinions. I shall not trouble you with many words, but shall quote one passage where this topic is mooted, and Boswell records Dr. Johnson's opinion:—'I started the question, whether duelling was consistent with moral duty? The brave old general (General Oglethorpe) fired at this, and said, with a lofty air, "Undoubtedly a man has a right to defend his honour." *Goldsmith* (*turning to me*). "I ask you, Sir, what would you do if you were affronted?" I answered, "I should think it necessary to fight." "Why, then," (replied Goldsmith), "that solves the question." *John-*

son. "No, Sir, it does not solve the question. It does not follow, that what a man would do, is therefore right."'*

"The sage begins, you see, with disputing the opinion of the defender of duelling; and, therefore, if he had begun this controversy with that love of contradiction which often influenced him, he probably would have gone on to show that he was wrong; but, continues Boswell, 'I said I wished to have it settled, whether duelling was contrary to the laws of Christianity. Johnson immediately entered on the subject, and treated it in a masterly manner; and so far as I have been able to recollect, his thoughts were these:—"Sir, as men become in a high degree refined, various causes of offence arise, which are considered to be of such importance, that life must be staked to atone for them, though in reality they are not so. A body that has received a very fine polish may be easily hurt. Before men arrive at this artificial refinement, if one tells his neighbour he lies, his neighbour tells him he lies; if one gives his neighbour a blow, his neighbour gives him a blow; but, in a state of highly polished society, an affront is held to be a serious injury. It must therefore be resented, or rather a duel must be fought upon it, as men have agreed to banish from their society one who puts up with an affront without fighting a duel. Now, Sir, it is never unlawful to fight in self-defence. He, then, who fights a duel, does not fight from passion against his antagonist, but out of self-defence, to avert the stigma of the world, and to prevent himself from being driven from society. I could wish there was not that superfluity of refinement; *but while such notions prevail, no doubt a man may lawfully fight a duel.*"

"'Let it be remembered, that this justification is applicable only to a person who receives an affront. All mankind must condemn the aggressor.'

"The topic was afterwards resumed, and then he says, p. 232, 'He (Dr. Johnson) this day again defended duelling, and put his argument upon what I have ever thought the most solid basis, that if public war be allowed to be consistent

* Boswell's Life of Johnson, vol. ii. p. 182.

with morality, private war must be equally so. Indeed, we may observe what strained arguments are used to reconcile war with the Christian religion; but in my opinion, it is exceedingly clear, that duelling, having better reasons for its barbarous violence, is more justifiable than war, in which thousands go forth without any cause of personal quarrel, and massacre each other.'

"On another occasion, when a near relation had killed his antagonist in a duel, and been himself dangerously wounded, Boswell revived the subject; and, though his auditor might have naturally recoiled at the practice, whose fruits were so bitter, he maintained resolutely the same doctrine. 'I do not see, Sir, that fighting is forbidden in Scripture. I see revenge forbidden, but not self-defence. No, Sir; a man may shed the blood of a man who invades his character, as he may shoot him who attempts to break into his house.'"

Mr. Jeffrey then cited another author of equal eminence and equal purity of moral doctrine, "Dr. Adam Fergusson, Professor of Morals in the University of Edinburgh, whose principles and precepts had trained the youth of their land to generous and gentle lives. He says, what undoubtedly is true, 'That a woman who is forcibly attacked in her chastity, or a man who is put to the trial of personal estimation or honour, may receive an injury, which the utmost power of the magistrate cannot afterwards repair. An exception is accordingly admitted in favour of the private right of defence on such occasions.' The Professor severely reprobates that caprice of manners, in compliance with which the injured must meet his antagonist, however injurious, upon equal terms; and, if he would preserve his honour, must pass through the hazard of a single combat for that purpose. His character for integrity may be blasted or entire, but his estimation, in point of honour, is independent of either condition.

"In this example, the deviation from reason is monstrous, — but the dignity of justice is made to stoop to the caprice of fashion; and so long as the private injury is suffered to have its effect, the petulance or folly of one person may drive another from his place in society; so long as the magistrate cannot preserve the citizen in his state, *so long the injured*

citizen must be allowed to defend himself, and to adopt the only means which are effectual for that purpose."

The strange paradox of Lord Kaimes was next cited, in deference probably to his authority as a Judge of Session, for the reasoning faculty of the author of Sketches of the History of Man seems so erratic and perverse, as to make him forget that he was a Christian judge. "Is duelling a crime by the law of nature? A distinction is necessary.—If two men, bent to destroy each of them the other, meet armed, and one or both be slain, the act is highly criminal: it is murder in the strictest sense of the word. But a duel, which an affront forces a man upon, for vindicating his honour, when no satisfaction is offered, or no proper satisfaction, *is very different. I cannot see that the person affronted is guilty of any crime;* and if the person who gave the affront have offered what he thinks full satisfaction, *I see no crime on either side.*"

Armed with these authorities, the dexterous advocate asserted, somewhat gently, "that he was startled at the very broad proposition on which the learned prosecutor rests his claim for a verdict of Guilty, and of murder too, on the present occasion. He does all but admit, indeed, that if there be *any* case in which killing in a duel is not murder, and not even criminal, it is the case now before you; and his proposition amounts therefore to this, that, in point of fact, a man who, in any given or imaginable situation, shall have the misfortune to kill his antagonist in a duel, shall be adjudged guilty of the crime of murder. I must hold him as stating this of the most favourable case that can be suggested, for I will not do the present case the injustice of supposing that any can be imagined stronger — or so strong. But take any case — suppose an officer of high rank, at the head of his regiment, beaten, kicked, spit on, reviled, and trampled on, by a man of his own condition, and of greater bodily strength, — all demands of apology or satisfactory explanation rejected with contumely, — reduced, therefore, to the alternative of choosing between being expelled from his profession, hooted and pointed at in society, or giving a meeting to his enemy, but if he does give a meeting, deploring the necessity; —

while discharging from his mind all bitter and malignant feeling, but bound to preserve his life, and that which renders life precious, — he calls this person to the field, and there has the misfortune to kill him — that man, we are told, is to be suspended on a gibbet as a murderer! Why, were such a doctrine precisely enacted by the Legislature, — did those statutes still subsist, — even then I would call upon you to disregard them, — I would say to you with truth, that they had been abrogated by a contrary usage, and by that change of time and manners, which we know, in this country, can effectually wipe away all penal enactments, whether formally repealed or not."

The counsel was far too experienced not be fully aware that his client's act was murder in the eye of the law. Cautiously, as if sounding the depths of his way, he ventured to denounce the law itself as harsh and obsolete. "I conceive the criminal law of this happy country to consist, not in the barbarous and implacable severity of its antiquated statutes, not in the severe and impracticable doctrines that may still retain their places in books of law, even of the greatest authority; not even, I say it with great submission, in the *dicta* that may fall from the lips of those high and stern magistrates, the judges of the land, who are bound to assert all the severity of the code which they are appointed to uphold, and in their places to countenance or sanction no relaxation of it, however hard and inoperative in the correction of crimes it may be. But, I say, the criminal law of this happy country consists in the authorised and approved *practice* of its courts of criminal law, — as this is ultimately embodied in the popular, admired, and consistent verdicts of juries. I am far from saying that juries have any dispensing power over the law. I am far from saying, though that has been said, that they have a rightful power to disappoint the law, where its sanctions have been plainly incurred. But, I say, that where the verdicts of juries have met, for a course of time, with the general approbation of the community, and the sanction of the courts under whose authority they are pronounced, — when they go on in an uniform series, and all point one way, they then make and constitute that real and prac-

tical law, on which all the subjects of the land are entitled to rely, and on the administration of which the people, with the greatest security, may depend. And, in truth, it is a proud and fortunate circumstance for this country, that such an institution as a jury should exist, with power occasionally to temper the severity of that law, which a court of another description would too inflexibly enforce, and thus silently to abrogate statutes, or maxims of common law, which the course of the times, the progress of manners, the disappearance of some crimes, and the rise of others, may have rendered inapplicable and unnecessary. If the law had become too severe for the age, juries should refuse to enforce it. In England this power of juries is not only recognised as existing, and winked at by judges, but is subscribed to by them, and applauded not only by the country at large, among whom these juries have never been known to have lost their credit, but even by the judges themselves, from whose *dicta* they occasionally dissent.

"Stealing to the amount of forty shillings being a capital felony (thank God! that legal atrocity is now at an end), juries will find that articles which the thief has sold for sixteen guineas, are worth only thirty-nine shillings. In the face of the most undoubted evidence, they are constantly in the practice, when obliged to convict, of finding the property not to be worth a tenth of its real value. In our own country we had a statute regarding child-murder, declaring that, if it should be proved that a woman had not revealed her pregnancy, or called in help at the birth, and the child was afterwards missing, these circumstances concurring; should, in all cases, be taken as proof of child-murder.

"Juries came to revolt at such an enactment; and, in course of time, it was abrogated by their uniform refusal to execute it. All our late writers distinctly say, that, of late years, no convictions could be obtained under that statute. Nay, I remember myself, in the early part of my practice, of two cases where the statute was libelled on, in one of which the jury stated, that they would not convict on the statute, and found the prisoner not guilty, and the judge approved of their verdict. And in another case, I remember a Depute-Advocate was reproved for bringing such a case to trial, and

the judge told him plainly, that if he did proceed on that statute, he would take care there should be an acquittal."

Whilst thus commemorating the contumacy of jurors, and describing it as laudable and praiseworthy, the advocate felt the impolicy of provoking a censure from the Bench, and acknowledged, that were this extraordinary and perilous power frequently assumed, the stability of the law would be gone. The precedent should only be followed in rare and extreme cases, of which the present was one. "I do not require you to find that Sir Alexander Boswell did not fall by the hands of the prisoner at the bar, but only that he did not fall by his malice. I call upon you to give in a verdict of no untruth, directly or by implication. I call — and I think I cannot call in vain, — that you will not allow your verdict to be any thing but truth; and I tell you, that you cannot be compelled to say that the prisoner *wickedly and maliciously* slew the unfortunate gentleman if you sincerely think he did not, — if you are satisfied that he slew him without malice, anger, or hatred, in the rencounter; — in short, that the very reverse of all these feelings burned in his bosom towards the unfortunate gentleman, at his death, before his death, and after his death."

Mr. Jeffrey most artfully changed the inquiry to this single point, whether there was evidence that Mr. Stuart killed his antagonist maliciously: was there any evidence of a malignant design? The law infers malice where the act is wilful and deliberate, and assumes that a rational being intends the natural consequence of his act; that where one person fires at another with a pistol, and kills him, that he meant to kill him: that, if he did this in consequence of a previous arrangement, there was malice aforethought; and if death results from the act, which such deliberate intent prompts and executes, that this death is murder. Propositions firmly fixed as these Mr. Jeffrey dared not openly deny, but suggested that "they were derived from a period of society when the abuse of duelling had become a monstrous and flagrant evil, and when, out of mere wantonness, vanity, and folly, the lives of the most valuable citizens were sacrificed, in consequence of its prevalence, for causes

equally fantastical and barbarous. Nor should it be forgotten, that it may with some reason be maintained that the most severe sanctions of the law should still be held out for the terror of offenders; — that all such killing should be taken, in the first place, for murder; that the act should be held as *primâ facie* illegal, and should have the effect of putting him who commits it to a proof of the circumstances which make his case an exception from the ordinary rule.

"I have stated this rather as an apology for the law, than as a justification of it. No opinions, no law, no rule of practice, no human authority, I say with confidence, can either compel or justify a jury in finding a man guilty of killing maliciously who is proved not to have had any malice, — not to have had any bad motive, though his conduct has been sifted to the uttermost. It would be, of all preposterous notions the most preposterous, and of all absurdities the most extreme, to say, that the law requires a jury to save themselves from perjury, by perjuring themselves to convict the innocent! You are bound, it is said, to find the prisoner guilty of maliciously killing. But I say that if you think he did *not* kill maliciously, you are plainly bound to acquit him; and that *you* would be guilty both of murder and perjury if you did otherwise."

After this artful perversion of making the malice, apart from the deliberate purpose, a matter of evidence, Mr. Jeffrey was emboldened to hazard a still more patent sophism, and to deny the prosecutor's assertion that there was no ground on which deliberate killing could be justified, except that of self-defence.

"Gentlemen, this is not the law. A man may deliberately and intentionally kill in defence of his own life undoubtedly; but he may also deliberately kill in defence of his property, where no personal violence is meditated — a woman may deliberately kill in defence of her chastity — a soldier may deliberately kill in defence of his post — a common sentry placed upon guard at the door of a field officer; nay farther, a common citizen may deliberately kill in order to prevent a suspected criminal from making his escape, or to prevent a rescue."

All these are instances of excusable homicide, or manslaughter, being committed in hot blood, and the adverb is misapplied; none of the lives are taken deliberately, or the character of the offence would be altered. The eloquent counsel pursued the subject with great force and energy.

"If a person comes to the door of a post-chaise, presents his pistol, and asks your money, you may lawfully shoot him —you may lawfully shoot him, if you act upon a reasonable belief of danger. Even if his pistol should turn out not to be loaded, and so it appears that he never intended to shoot you, still your shooting is lawful. If you see a person packing up your property, or breaking into your house at night, and carrying goods away, you may lawfully shoot him. Why?— just because you are entitled to say, I value more the security of my property, even when placed in unreal danger, than the life of the person who has put himself in opposition to my rights, such as they are. But, if a person has done that which has placed me in the dilemma of either shooting at him, or of living as an outcast from society—of being exposed to all manner of insults and contumelies—of being excluded from all honourable pursuits and professions— shrunk from by my ancient friends—the cause of blushing to my relations, and sorrow to my children—the stain of an honourable name, and a hopeless outcast and exile from society—without hope, means, or chance of restoration— if, I say, a man, by an act which is unlawful in itself, has placed me in that situation, can it be said, there being no malice in my heart, no means of defending my rights but this, no possibility of my subsisting on the earth without scorn, and all this by the unlawful act of another,—I ask you, if, under these circumstances, I do not take my enemy off by assassination, but merely expose his life to the same risk as my own, and that, perhaps, with many chances against me, and he fall,—is it possible that the law, which deals so leniently with other slaughters, should call that a murder? I submit to you, that this would be a proposition altogether monstrous. It is fortunately one which will now find neither patrons nor protection in any quarter.

"I do not say that all duels, if fairly fought, must save the

person slaying from the consequences of unlawful slaughter, or even of murder. On the contrary, I admit that, though duels, fortunately, are more rare than they were a hundred years ago, and though I trust that a great proportion of them now proceed on justifiable grounds, it still is much to be feared that, if an unlimited licence were given to them, and if the ordeal of a sifting trial did not await the survivor, there might be instances of abuses, such as formerly existed, and were repressed by severe statutes. I would by no means place my cause on this footing. I freely admit that there is a heavy presumption against that man by whom blood is shed. I admit that I would come slowly to the conclusion that blood had been shed with innocence; and I ask no more than this, that I should be entitled to look to the causes of quarrel, and not be judged by dry maxims from books. I ask no more than that you would look to the practice of the times, to the recent proceedings of courts of law; and, in every case, inquire whether you find, from the nature of the act, as proved, any indications of that malignant spirit, and of those inexcusable passions, without which, I say, there can be no crime,—without which, where life is lost, there can undoubtedly be no murder."

This course of practice Mr. Jeffrey illustrated by a number of duels investigated in courts of justice, after the series of acquittals in which it was impossible to hold that our Courts now think that all killing in a duel was necessarily murder. Having detained the jury so long on the law and the precedents, Mr. Jeffrey waived all further discussion of the circumstances of the case, but wound up his subtle and refined arguments with this noble peroration.

"Look at the facts. I will not say the provocation given to Mr. Stuart, that would be a poor expression. I say look at the circumstances of unmerited and atrocious abuse of which this gentleman was made the victim, and of which, when he found that the author was his equal in rank, it was impossible for him to remain a patient victim, without incurring actual and merited disgrace, and giving credibility to those imputations which, till then, no one could believe.

"His most reasonable offers being rejected, the course he

took, I say at once, was *inevitable.* I do not plead for it the apology of provocation. It was not done in heat of blood, or under the influence of any *passion,* criminal or venial. It was the deliberate act of a wounded heart, and a mind convinced, and overwhelmed with the sense, of its absolute necessity. In the long vista of his repeated meditations, in the cool anguish of nights and days, he saw and felt that he could not live without doing that which brought his own life into hazard, and what to him was more painful, brought the same danger to his enemy. He was actuated by no violence, no heat of feeling; his actions now were only in unison with what his words had been before; and these showed that his motives were pure, defecated from any stain of anger or malignity. From first to last, there is proof that his heart was overwhelmed with the painful sense of what he had unwillingly done to the unfortunate man who injured him; and if his courage and firmness are undeniable, while exposed to danger, the relentings and kindness of his heart are equally displayed when it was over. What he said to Mr. Liston and to Lord Rosslyn, is confirmed by that most pathetic interview with Mr. Gibson, when he exclaimed, 'Would to God I *had* taken aim, and then I might have missed him!' When you compare that with the scenes and recollections which had led to it; when you find him agitated and overwhelmed, you must be satisfied that slaughter was not wished for by this person, that nothing was desired by him but the restoration of his own dignity; you must feel, that the fatal act was forced upon him, as irresistibly as if he had been the involuntary executioner of a judge's warrant, or one obeying the behests of a higher power. This gentleman, who was called, in language that disgusts and astonishes one, even in the repetition, sometimes a coward, and sometimes a ruffian, — who as a coward should have exulted in his safety, — as a ruffian have triumphed over his fallen foe, — what does he do in this moment of instinctive feeling? Why, Gentlemen, you find him dissolved in speechless grief. He cannot express in language the misery he feels upon witnessing the fate to which his unlucky hand had just consigned his enemy. His emotion, indeed, resembles more the meltings of a female

bosom than the agitation of a male. When forced from this scene of distress and danger to him, and driven to a foreign land for his immediate safety, we there find him still pursued by his melancholy reflections; and when Mr. Allan communicates to him the certainty that Sir Alexander Boswell was dead by his hands, his burst of grief is overwhelming and frightful.

"The character given of him by the friends who have known him longest and best, separated as they have been from him by political opinions, is just the character I should expect of a man who is proved, by the evidence of this day, to have acted as Mr. Stuart has done; and the way in which he acted is demonstration that he truly deserved the character which had been given of his mind.

"Take, then, his character, take his actions, and say whether you can find yourselves bound, whether you can find yourselves entitled, to pronounce him guilty of having maliciously killed his adversary, instead of irresistibly and necessarily going out as he did, in vindication of rights a million times more dear than those in support of which it is lawful to kill. I cannot doubt your answer to this question,—one only can be given.

"I am afraid my anxiety has induced me to trespass far longer on your patience than the difficulty or danger of the case required. There is certainly a puzzle in the words of some law authors. I have been anxious to dispel this. On the reason and justice of the thing, there cannot be a doubt. For, after all the admonitions and solemn warnings of the scenes we have been reviewing, and in which we are now engaged, I doubt whether there be one among you, who could bear to be called a coward, and branded as a ruffian, day by day, and after discovering that these injuries were inflicted by one known to be your equal in rank, would not incur all the hazards to which my unfortunate friend has been exposed, though few of us could imitate the mildness with which he encountered them! I trust, therefore, you will not find him guilty, for doing that which, in his circumstances, you must feel that every one of you would have done; that which you must in your hearts wish, that the

best and dearest friend you have in similar circumstances should do — that you will not, in a word, find a man guilty of acting maliciously, while you believe him to have been absolutely free from malice. I trust, therefore, that, not in violation of the law, but in dutiful observance of its spirit and clear injunctions, and rigorously giving it effect, you will find him Not Guilty of the crime with which he is charged; and thus restore him untainted to that society of which he is the delight, and in which he performs so many useful offices; and, at the same time, in part at least, to that peace of mind which, with his feelings and his heart, I fear it is not in the power of your verdict, or of any human tribunal, ever effectually or completely to restore."

The Lord Justice-Clerk did his part well in stating the law clearly and authoritatively, citing the language of Sir George Mackenzie. "Duels are but illustrious and honourable murders; and, therefore, I have subjoined this title to the title of Homicide. This is that imperious crime which triumphs over both publick revenge and private virtue, and tramples proudly upon both the law of the nation and the life of our enemy. Courage thinks law here to be but pedantrie, and honour persuades men, that obedience here is cowardliness." — (*Mackenzie's Crim. Institt.* Tit. XII. p. 72.)

Baron Hume, the highest authority on the Scottish Law, was equally precise and explicit: — "For this deliberate resolution to kill a fellow-creature, the law cannot but hold both parties equally and deeply blamable; and the full plea of *self-defence* is, therefore, out of question in all such cases, whatever may have been the origin and history of the quarrel, and though the deceased have fallen a victim to his own insolence or indiscretion."

The Judge concluded his citations from text-writers on the law of Scotland with the following apposite remarks by Mr. Burnett: — "Where the act is deliberate, and of set purpose, and still more where it is the result of a previous concert, *self-defence*, properly speaking, can have no place; and, in such case, it can make no difference at common law, who was the challenger or first aggressor, though, under the statute

(1600), the *provoker* (as he is called) is punishable *with a more ignominious death.*"

"But he adds: 'Notwithstanding this, it may be difficult for a jury to lay out of view altogether, in a case of *homicide* in a duel brought to trial at common law, the circumstance on which side the original aggression lay, or the nature of the antecedent provocation (and, much more, any alleged *unfairness* by inequality of weapons, or in manner of attack, or mode of fighting), without regard to *who was the immediate challenger;* thereby making allowances so far for the notions of honour which usage and custom have sanctioned.'"

Having cited the law of England to the same effect, the Judge left the question to the jury "whether, in the view of the law which I have stated to you, there is not an obligation upon you to find a verdict against the prisoner at the bar, on account of the duel itself, on a review of the evidence laid before you?"

The Lord Justice-Clerk dwelt forcibly on the very aggravated provocation that had been given, and the character of the pannel, as rebutting all personal rancour. "Though no false punctilio or notion of honour can vindicate an act which terminates fatally to another fellow-creature, take along with that consideration the injuries received by the prisoner, — the uncommon provocations given, — the terms of accommodation offered and rejected, — and combine them all together; the temperate conduct of the prisoner in the field; his grief for the fatal issue of the meeting, — then, in my humble apprehension, you will have a case before you which, in reference to the charge made, and the evidence led in support of it, is well deserving of your most calm, deliberate, and dispassionate consideration."

This honest summing up of the independent Judge deserves especial praise, as he did not temporise with public feeling, or melt down the law to minister to private gratification. The pannel was exposed to no danger from a special jury of gentlemen; but even if there had been peril, it was far better for the interests of justice that he should risk a conviction, than that the law should be mis-stated from the judgment-seat.

The Jury, without retiring, after a few moments' consultation, returned their verdict *vivâ voce* by their Chancellor.

Sir John Hope. My Lord, the jury unanimously find Mr. Stuart *Not Guilty*.

The verdict was received with strong marks of satisfaction by the audience.

Lord Justice-Clerk. Mr. James Stuart, I congratulate you on the verdict returned by a jury of your countrymen; but, in the present state of your feelings, it would be quite improper in me to say one word more to you upon the subject.

NOTES TO THE TRIAL OF JAMES STUART, ESQ.

Note 1.

Mr. Stuart died in November 1849, in his seventy-fourth year, while this work was passing through the press. After his triumphant acquittal, he diversified his professional pursuits with experiments in farming and commercial speculations, which in the year 1825 proved so disastrous as to compel him to embark for America. He published an account of his travels there, most favourable, tinted *couleur de rose*, to brother Jonathan, which present an amusing contrast to the "Men and Manners in America" of Captain Hamilton. They witnessed many of the same scenes, and were present at the same parties, but the effect produced on each was strikingly different. Mr. Stuart, on his return to this country, undertook the editorship of the "Courier" newspaper, and when Lord Melbourne had become premier, was rewarded for his entire devotion of head, heart, and hand to the Whig cause with the office of Inspector of Factories. He died of disease of the heart, induced probably by the many trying scenes through which he had passed in his strangely chequered career, preserving to the last the character of a staunch partizan, a warm friend, and honourable man.

Note 2.

Mr. Lockhart, in his "Life of Sir Walter Scott," has made a very interesting reference to some of the untoward and mournful circumstances which led to and surrounded the duel. "The violence of disaffected spleen was encountered by a vein of satire, which seemed more fierce than frolicsome. The rude drollery of the young hot bloods boiled over. Sir Alexander Boswell was revealed as the writer of certain truculent enough pasquinades. A leading Edinburgh Whig, who had been pilloried in one or more of these, challenged him, and the Baronet fell in as miserable a quarrel as ever cost the blood of a high-spirited gentleman.... The merriest tones of Sir Alexander Boswell's voice were

still ringing in Scott's ears when he received the fatal intelligence. That evening was, I think, the gayest I ever spent in Castle Street, and though Charles Mathews was present, and in his best force, poor Boswell's songs, jokes, and anecdotes had exhibited no symptom of eclipse. It turned out that he had joined the party whom he thus delighted, immediately after completing the last arrangements for the duel! It may be worth while to add, that several circumstances of his death are exactly reproduced in the duel scene of St. Ronan's Well."

THE TRIAL

OF

JAMES THOMAS EARL OF CARDIGAN

FOR FELONY IN SHOOTING AT CAPTAIN TUCKETT,

BEFORE THE HOUSE OF PEERS IN FULL PARLIAMENT,

On Tuesday, February 16. 1841.

THE trial of Lord Cardigan, for shooting at Captain Tuckett in a duel, presents several points of curiosity and interest. Nearly seventy years had passed since a peer had been tried for felony, and then he slew his antagonist. For the first time in judicial annals had the law against shooting with intent to kill, or to do some grievous bodily harm, been applied to this description of offence — a crime against society doubtless, a calamity to the challenger, but never before made the subject of prosecution under the statute.

It had been suggested, indeed, by an able writer on the criminal law, Mr. Chitty, that where an ineffectual exchange of shots took place in a deliberate duel, both the parties might be guilty of the offence of maliciously shooting within the 43 Geo. 3. c. 58., and the seconds be also guilty as principals in the second degree. But this was a mere speculation of the closet, and had never been submitted to judicial determination. As the duel had been fairly fought, and the *code of honour* satisfied, without loss of life, it seemed strange that the first unsheathing of the statute should be directed against a high-spirited and gallant nobleman, who had been exposed to violent prejudice and popular clamour; and the prosecution seemed justly obnoxious to the suspicion that it originated in party malevolence, and not in respect to the law. The grand

jury at the Central Criminal Court, had found true bills for felonious shooting against Lord Cardigan and his second, Captain Douglas, and yet ignored the bills against Captain Tuckett and his second, Captain Wainwright, though supported by the very same evidence. Both seconds had taken part in loading the pistols and measuring the ground, both the principals had fired at each other, and, unless the fact of one being wounded was, through a false commiseration, to procure his indemnity, no suggestion could be made for the one which would not apply with equal force to the other. The secret of the distinction, sanctioned by the grand jury on oath, lay in the unpopularity of the Earl, whose disputes with some brother officers had formed the topic of vehement newspaper invectives; and thus what should have been a solemn act of justice, if entertained at all, was converted into a very pitiful manifestation of popular rancour and spleen.

The charge presented itself in a new and dangerous shape; but Lord Cardigan could not fail to meet with hearty sympathy from his brother peers. Even in cases of duels the converse of his, where life had been taken furtively and with the most startling proof of unfairness, the supreme court of judicature had shown itself extremely tender of the personal honour of a peer. Lord Mohun, Lord Warwick, and Lord Byron, the only three peers tried for murder in slaying their opponents in duels, had been convicted of manslaughter only, and claimed the benefit of the peerage. The deaths arose in these cases from quarrels in their cups, and there was some reason for believing that the provocation was too recent to allow the passions to subside, and that the slaying was in hot blood.

The remark of the Attorney-General, in opening the case for the prosecution against Lord Cardigan, that the charge did not imply any degree of moral turpitude, gave rise to some animadversion.

In the House of Lords, a few evenings after, Lord Eldon called attention "to that portion of the address in which the kindly feelings of the first law officer of the Crown seemed to have carried him too far. That he, the Attorney-General, was glad that nothing of moral delinquency had

occurred. Each specific case must stand between the individual, his conscience, and his God; but he, Lord Eldon, could not conceive it possible how any man could pursue such a course without some delinquency being attached to the act, however the circumstances in each particular case might diminish the amount of that delinquency."

The Bishop of London concurred in the reproof, and declared that, had he been present, he should have listened to the expression of those sentiments with deep regret. The practice of duelling was a shame and a scandal, the remains of chivalry, barbarous, wicked, and unchristian.

There is a distinction, it should be remembered, between the words reproved, "moral delinquency," and the words reported, "moral turpitude." There are offences forbidden by Christianity, which involve in their commission no personal disgrace at the bar of public opinion, no scandal or obloquy. The member of society may be a delinquent, and yet not exposed to shame. The remark was unguarded, however, though uttered in a kindly spirit, and open to misapprehension. The supreme tribunal must not be presumed to listen with favour to the notion that a charge of felony did not imply any degree of moral turpitude, and that a conviction for felony would reflect no discredit on their order.

The Judges in the last resort could not collectively recognise the principle that a deliberate attempt at homicide was morally excusable, that the proudest peer should be above the law, and the avenger of his own wrongs. Lord Mountcashell, in the dialogue that ensued, forcibly remarked the painful dilemma, the strange anomaly, that had been so long suffered to exist.

"An officer in the army received an affront. His brother officers expected that he should go out. If he did, he was threatened with 1 Victoria; if he refused, he was obnoxious to the contempt of his brother officers."

The abortive result of the trial, as the event of the duel was neither fatal nor serious, and the solemn nature of the inquiry might in itself tend to check a pernicious custom, ought not to have created any angry feelings. It was received, however, with a howl of public displeasure, vehement

and senseless; as if national justice had been outraged to procure the escape of some mighty delinquent. The House of Lords, as the highest judicial body, could not contravene those principles of evidence which required proof of the name of the party injured, according to his description in the indictment. Nor are those principles so over-refined and absurd, as sciolists in jurisprudence and rash declaimers would describe them. If strict proof of the identity of the person injured with the person named in the indictment were not required, a man might be executed for the murder of a person whom he never saw. If correctness and accuracy in the name were immaterial, any name might be inserted. Had the case for the prosecution not broken down from this defect of proof, a point of extreme interest to the lawyer would have arisen, whether Lord Cardigan could still have claimed the benefit of the statute 1 Edward 1. c. 12. s. 13., which allowed purgation from felony to a peer, as a clerk convict, though he could not read. This provision was meant to have been abolished by the statute 7 & 8 Geo. 4. c. 28. s. 6., but the act was supposed to have been too defectively worded to carry into effect the intention of the legislature. The check-mate given to the public prosecutor prevented this display of legal learning and ingenuity; and to silence all further doubts or cavils, a statute was immediately passed (21st of June, 1841), which declares that protection thrown around a peer by the statute of Edward shall be repealed and utterly void, and that every Lord of Parliament, or peer of this realm, having place and voice in Parliament, against whom any indictment for felony may be found, shall plead to such indictment, and shall upon conviction be liable to the same punishment as any other of Her Majesty's subjects.

Extract from the Journals of the House of Lords.

"Die Martis, 16° Februarii 1841.

The Lord Denman, in the absence of the Lord Chancellor, entered the House in his robes, preceded by the Serjeant with the mace, Black Rod carrying the Lord High Steward's

staff, and Garter with his sceptre, and took his seat on the woolsack as Lord Speaker.

After prayers the roll of peers was called over by the Clerk Assistant, beginning with the junior Baron.

The Clerk of the Crown in Chancery and the Deputy Clerk of the Crown in the Queen's Bench then made three reverences, and the Clerk of the Crown in Chancery, on his knee, delivered the commission to the Lord Speaker, who gave it to the Deputy Clerk of the Crown in the Queen's Bench, who received it on his knee; both the clerks then retired, with like reverences, to the table.

After proclamation made for silence,—

Lord Speaker. Let Her Majesty's commission be read, and let all persons rise and be uncovered while the same is read.

The commission was read by the Deputy Clerk of the Crown in the Queen's Bench, appointing Thomas Lord Denman Lord High Steward.

Then Garter and the Gentleman Usher of the Black Rod, having made their reverences, proceeded to the woolsack, and having taken their places on the right hand of the Lord High Steward, both holding the white staff, presented it on their knees to his Grace.

His Grace then rose, and, having made reverence to the throne, took his seat in the chair of state placed on the upper step but one of the throne, and delivered the staff to the Gentleman Usher of the Black Rod.

Proclamation for silence was made by the Serjeant-at-Arms."

With such solemn pomp and ceremony, yet not more grave and august than the occasion demanded—forms of stateliness and heraldic rituals appear essential to judicial proceedings involving the honour of the peerage,—was ushered in the trial of the Earl of Cardigan for shooting, with intent to kill, one Harvey Garnett Phipps Tuckett.

"Proclamation was made by the Serjeant-at-Arms for the Yeoman Usher to bring James Thomas Earl of Cardigan to the bar.

The Earl of Cardigan was brought to the bar by the

Yeoman Usher, and on approaching it made three reverences, and knelt till directed by the Lord High Steward to rise; then he made three reverences, one to his Grace the Lord High Steward, and one to the peers on either side, who returned the same; his lordship was then conducted to the stool provided for him within the bar, near to his lordship's counsel.

Lord High Steward. My Lord Cardigan, your lordship stands at the bar charged with the offence of firing with a loaded pistol at Harvey Garnett Phipps Tuckett with intent to murder him; in a second count you are charged with firing with intent to maim and disable him; and in a third count you are charged with firing with intent to do him some grievous bodily harm. Your lordship will now be arraigned on that indictment.

Then the Earl of Cardigan was arraigned by the Deputy Clerk of the Crown in the Queen's Bench in the usual manner.

Deputy Clerk of the Crown. How say you, my Lord, are you guilty of the felony with which you stand charged, or not guilty?

Earl of Cardigan. Not guilty, my Lords.

Deputy Clerk of the Crown. How will your lordship be tried?

Earl of Cardigan. By my peers.

Deputy Clerk of the Crown. God send your lordship a good deliverance.

Mr. Attorney-General and Mr. Waddington appeared as counsel for the prosecution.

Sir William Follett, Mr. Serjeant Wrangham, and Mr. Adolphus appeared as counsel for the Earl of Cardigan."

The charge was stated by the Attorney-General, Sir John Campbell, in that calm and temperate tone, which softens by its amenity in modern state trials the austere task of the public accuser.

"My Lords, I have the honour to attend you upon this occasion as Attorney-General for Her Majesty, to lay before you the circumstances of this case, without any object or wish on my part, except that I may humbly assist your

lordships in coming to a right conclusion upon it according to its merits. According to all the precedents that can be found, whenever there has been a peer tried in parliament, the prosecution has been conducted by the law officers of the Crown. Fortunately, my Lords, we have no living memory upon this subject. It is now sixty-four years since any proceeding of this sort has taken place; and I am rejoiced to think, my Lords, that the charge against the noble prisoner at the bar does not imply any degree of moral turpitude, and that, if he should be found guilty, the conviction will reflect no discredit upon the illustrious order to which he belongs. But, my Lords, it seems to me that he clearly has been guilty of a breach of the statute law of the realm, which this and all courts of justice are bound to respect and enforce. Your lordships are not sitting here as a court of honour, or as a branch of the legislature; your lordships are sitting here as a court of justice, bound by the rules of law, and under a sanction as sacred as that of an oath."

Sir John Campbell then stated, with singular clearness, the history of the common and statute law relating to personal injuries. By the common law no personal violence, where death did not ensue, amounted to more than a misdemeanour. The Black Act, 9 Geo. 1., was the first that made an attempt upon life without wounding a felony. Subsequent statutes, called, from the names of the noble lords who introduced them, Lord Ellenborough's and Lord Lansdowne's acts, made it a capital offence to shoot at another with intent to murder, or do grievous bodily harm, provided that if death had ensued therefrom the crime would have amounted to murder. The recent statute, 1 Vict. c. 85., placed the common law upon a firmer foundation, and it rendered the offence of maliciously shooting at another, not with premeditated malice, but deliberately, and causing a bodily injury dangerous to life, a capital offence. It also enacted, that whoever should shoot at any person with intent to commit the crime of murder, or with intent to do some grievous bodily harm to such person, although no bodily injury were inflicted, should be guilty of felony, and liable to the punishment of transportation or imprisonment. The present indictment might

have been framed on the capital charge. The Attorney-General was happy to say that it was not so framed. A wound was inflicted, but the prosecutor, very properly, has restricted the charge to firing at, with an intent, without alleging that a wound dangerous to life was inflicted.

The substance of the evidence was shortly and accurately stated — "That upon the 12th day of September last the Earl of Cardigan fought a duel with pistols, on Wimbledon Common, with Captain Harvey Tuckett, and wounded him at the second exchange of shots. It will appear before your lordships, that at about five o'clock in the afternoon of that day two carriages were seen to come in opposite directions to the neighbourhood of Wimbledon Common, and a party alighted from each. It was evident to those who observed what was taking place that a duel was in contemplation. The parties came to a part of Wimbledon Common between the road that leads by Earl Spencer's park and a windmill standing upon the top of the common. The seconds first took possession of the ground, and made the usual preparations. The principals, the Earl of Cardigan and Captain Tuckett, were then placed at a distance of about twelve yards from each other; they exchanged shots without effect; they received from their seconds each another pistol; they again fired, and Captain Tuckett was wounded by Lord Cardigan. There came up, almost immediately, Mr. Dann, who occupies the mill, and his son, with Sir James Anderson, a surgeon, who had been standing close by. The wound was examined; it bled copiously; but most fortunately, and I believe no one rejoices in that more than the Earl of Cardigan, it proved not to be of a dangerous nature. The parties were all removed by the miller, who was a constable, and took them into custody. The wound was further examined at his house, and Sir James Anderson pressed that he might be at liberty to take Captain Tuckett to his house in London; which was immediately acceded to, upon his promising to appear, when he had recovered, before the magistrates.

"The miller retained the Earl of Cardigan, and his second, Captain Douglas, in custody. Captain Douglas was the second of the Earl of Cardigan, and Captain Wainwright

the second of Captain Tuckett. The Earl of Cardigan had still a pistol in his hand when the miller approached. There were two cases of pistols on the ground, one with the crest of the Earl of Cardigan upon it, which he claimed as being his property. The party were conducted before the magistrates at Wandsworth, and, upon alighting from his carriage, Lord Cardigan made use of these words, 'I have fought a duel, and hit my man, I believe not seriously.' He then, pointing to Captain Douglas, said, 'This gentleman is also a prisoner, and my second.' He was asked whether the person that he had hit was Captain Reynolds; upon which he said, 'Do you think I would condescend to fight with one of my own officers?' His lordship was compelled by the magistrates to enter into a recognizance to appear when called for, which he did from time to time, till at last the matter was sent to the Central Criminal Court."

The application of the law to these facts was equally clear; they fully sustained all the counts in the indictment: in the first count, a shooting with intent to murder; in the others, to maim, to disfigure, and to do some grievous bodily har m The highest authorities known to the law of England, Hale, Hawkins, Foster, and Blackstone, were cited in support of this indisputable proposition — that where both parties meet avowedly with an intent to murder, thinking it their duty as gentlemen, and claiming it as their right, to wanton with their own lives and those of their fellow-creatures, without any warrant or authority from any power, either divine or human, but in direct contradiction to the laws both of God and man, this is murder, and therefore the law has justly fixed the punishment of murder on them, and on their seconds also.

In two recent cases, that of Mirfin at the Central Criminal Court, and of Sir J. Jeffcot on the Western circuit, the same doctrine was enuntiated in the most precise and emphatic terms. It necessarily followed, from the definition of murder, that the first count of the indictment was completely proved.

"My Lords, the only supposition by which the case could be reduced to one of manslaughter would be, that Lord Cardigan and Captain Tuckett casually met on Wimbledon

Common; that they suddenly quarrelled; and that while their blood was hot they fought. But your lordships can hardly strain the facts so far as to suppose that this was a casual meeting, when you find that each was supplied with his second, that each had a brace of pistols, and that the whole affair was conducted according to the forms and solemnities observed when a deliberate duel is fought.

"Then, my Lords, with regard to the second and third counts of the indictment, I know not what defence can possibly be suggested; because, even if there had been this casual meeting contrary to all probability, and all the circumstances of the case, — if it would only, had death ensued, have amounted to the crime of manslaughter, that would be no defence to the second and third counts of the indictment.

"This was expressly decided in a case which came before the fifteen Judges of England, 2d vol. Moody's Crown Cases, p. 40. Anonymous."

The Attorney-General finished his masterly exposition of the law and facts with a short but graceful peroration. "My Lords, I conclude with respectfully expressing my conviction, that, at the conclusion of this trial, your lordships' judgment, whatever it may be, will be according to the law and justice of the case; and that your lordships will preserve that high reputation in the exercise of your judicial functions, which has been so long enjoyed by your lordships and your ancestors."

The miller of Wimbledon, his wife, and son, who witnessed the duel from the stage of their mill, proved the facts as opened. The fidgetty, nervous anxiety of Sir William Follett, at the case he had to meet, took alarm at the most simple form of question, — "Do you remember, about five o'clock on that afternoon, observing a carriage driving towards the common?

Sir William Follett. Pray do not lead him.

Mr. Waddington. You tell us you saw the pistols fired a second time; did you observe whether either of the shots took effect? — I thought that Captain Tuckett was wounded, — or at least the other gentleman; I did not know who it was.

You thought that the gentleman that you afterwards ascertained to be Captain Tuckett was wounded? — Yes.

Did you see what that gentleman did with his pistol after the second shots were fired? — No.

You did not see whether he held it in his hand, or what he did with it? — Which are you alluding to?

I am speaking of Captain Tuckett.

Sir William Follett. He says he did not know 'who he was."

The remark proved that his rapid glance had caught intuitively the only crevice for escape, failure of proof of identity of the party wounded. Sir John Campbell had intimated, in describing his evidence, that he could offer none respecting the origin of the quarrel.

Captain Douglas was to take his trial for the offence, and though a bill of indictment against Captain Tuckett and Captain Wainwright, his second, had been cut by the grand jury, they were still liable to be tried, and it would not be decorous to summon them to give evidence which might afterwards be turned against themselves. Even as to the surgeon, a significant hint, though slight and remote the allusion, had been dropped, that he might prefer to maintain a discreet silence. "I shall call before your lordships Sir James Anderson, who has hitherto spoken freely upon the subject, and, I suppose, will now make no objection to state to your lordships all which fell within his observation."

The most wary vigilance of the acute advocate was at once directed to this, the single weak point in the case for the prosecution. The miller had given an account of his going up to Lord Cardigan and arresting him, in the Queen's name, for a breach of the peace, of the whole party proceeding to his house, and of his afterwards consenting that the wounded gentleman should return to his own home, on their giving him a card of his address, when the following colloquy and interruptions ensued.

The wounded gentleman gave you a card of his address? — I have a card of his, but whether he gave it me or another gentleman, I am not certain.

Have you got it here? — I have.

Produce it.

Sir William Follett. We cannot have that card in evidence unless it came from Lord Cardigan; it cannot be made evidence against him unless that be shown.

Mr. Waddington. Was Lord Cardigan present when this card was given?—In the yard.

Lord Wynford. Was he near enough to see what was done?—Yes.

And to hear what passed between you and the other gentlemen?—I should think so; I cannot say exactly.

Sir William Follett. Do not read that card yet.

Mr. Waddington. I propose to read it. Do you make any objection to it?

Sir William Follett. Certainly.

Mr. Waddington. I now propose, my Lords, to read this card.

Sir William Follett. The counsel for the prosecution in this case are proposing to read a card, for the purpose, I presume, of proving who one of the parties was upon this occasion.

Lord High Steward. Do you object to its being read?

Sir William Follett. I object to any thing of the kind, my Lord.

Lord High Steward. Mr. Attorney-General, do you think it material to tender that evidence at present?

Mr. Attorney-General. We will waive it for the present.

Mr. Waddington. Did the other gentleman that wanted to go away write something in pencil upon the back of the card?—Yes.

Upon receiving this card did you allow them to go?—Yes.

In consequence of receiving this card, did you afterwards call at a particular house?

Sir William Follett. I wish you would not lead him so much. You ask him whether, in consequence of a certain thing, he went to a certain place.

Mr. Waddington. I apprehend it is a strictly correct question. Do you object to the question?

Sir William Follett. I certainly object to its form. Alter the form of it.

Mr. Waddington. Then I will not ask that at present.

The seasonable alarm of Sir William Follett evinced itself after this by a petulance of tone, and captious impatience of manner, unusual with that consummate advocate, who was in general calm and urbane, because self-collected. His accustomed manner was perfect self-possession and repose. He felt too completely master of his subject and the jury, ever to give way to that irritability which frequently springs from dread of the antagonist at Nisi Prius, and which so unconsciously betrays a lurking sense of weakness in those who display it.

The witness Dann having then spoken of going, on the 18th of September, to 13, Hamilton Place, was asked —

Whom did you see? — I saw Captain Harvey Tuckett.

Did you speak to him? — I did.

Sir William Follett. I wish you would put your questions differently.

Mr. Attorney-General. We ask him whom he saw.

Sir William Follett. He does not know Captain Harvey Tuckett, I suppose.

Mr. Waddington. He asked for Captain Harvey Tuckett and he saw this gentleman.

Mr. Attorney-General. It is quite regular.

Mr. Waddington. Did you speak to him? — I did.

At the close of the miller's re-examination, the card was tendered, and a clever legal argument arose on its admissibility.

Mr. Attorney-General. My Lords, it is not a matter of essential importance, but I now propose, with your lordships' permission, that this card should be given in evidence. It is a card that was delivered to the witness in the presence of the noble Earl, and I apprehend on that ground, and likewise that it is part of the *res gestæ*, that it is clearly admissible upon this occasion.

Sir William Follett. My Lords, I shall take your lordships' opinion, whether the counsel for the prosecution have any right to read this card. Your lordships will observe the evidence relating to it. It is not that it was given by Lord Cardigan, or that it was given with Lord Cardigan's know-

ledge. It is perfectly clear, indeed, upon the statement, that Lord Cardigan did not see the card; that he did not see what was written upon it; and there is no evidence even to show that he was aware of that card being given. The object of this evidence of course is to prove who the person was that gave that card.

Now, my learned friend, the Attorney-General, says, it is part of the *res gestæ*. But it is obvious that a person might give a card, or an address, or direction, not for the purpose of giving his real name, but for the purpose of giving another; and unless it was done with the knowledge, and the full knowledge, of the prisoner at the bar, I think your lordships will say that it is not evidence against him. It appears here that he was no party to the giving of the card; he was not aware of the contents of the card; he knew nothing about it; he never saw it; and therefore I take the liberty of submitting to your lordships, that that card cannot be read in evidence against the noble earl at this time. Whether they will have any other evidence for the purpose of proving who this gentleman was, or for the purpose of connecting this card with the noble earl, is another question; but, at present, I humbly submit to your lordships, that there is no evidence to connect it with him, and that it ought not to be read at all in evidence against him.

Lord High Steward. Mr. Attorney-General, you think it important to press this evidence, do you?

Lord Wynford. The witness does not know whether the Earl of Cardigan saw it.

Sir William Follett. Nor does he know which of the parties gave it.

Mr. Attorney-General. It stands that he cannot tell whether it was the wounded gentleman, or the gentleman that accompanied him, that gave the card; but it was given either by the one or by the other; it was given in the yard; it was given in the presence of the Earl of Cardigan. Now, I will not state what this card is at present; but suppose it to contain the address of Captain Tuckett, and that it was 13, Hamilton Place, and that thereupon the witness goes to 13, Hamilton Place, and sees the wounded gentleman, would

not that be admissible evidence upon this trial? It would be entirely for your lordships to say what weight is to be given to the evidence. The only question now is whether it be admissible. Now, this being given in the presence of the Earl of Cardigan, and then the witness going to the place mentioned in this card, ought not that card to be admitted in evidence *valeat quantum?*

Lord High Steward. Do you mean to contend that because the card is given in the presence of the prisoner, that makes the contents of it evidence, without some proof that he saw it?

Mr. Attorney-General. I would by no means contend that a written document given in the presence of the prisoner would render the contents of that written document evidence against the prisoner; far from it. But this card is to be considered merely as the address of the person who wishes to retire.

Sir William Follett. You are stating the contents by way of making it evidence.

Mr. Attorney-General. I am not stating the contents; I am cautiously abstaining from it. But when a person wishes to have leave to go to his home, and gives a card such as this, it must be presumed to be merely his address, stating his name and place of abode; and I should humbly submit to your lordships, that this would be admissible evidence, not only on the ground of its being in the presence of the noble prisoner, but I will suppose that he had not been present; I will suppose that, upon the field, when this gentleman called, Captain Tuckett was wounded; at that moment, Lord Cardigan not being present, he had said, "Allow me to go home; here is my address;" I apprehend that then your lordships would have allowed the card to be given in evidence, as showing that this was the address given upon the occasion, and at which this person who gave it was afterwards found by the witness.

Sir William Follett. I do not know whether I need offer any observations to your lordships in reply; but that which my learned friend is now contending for seems to be contrary to what one has always understood to be the ordinary rules

of evidence. The rules of evidence are undoubtedly the same in civil as in criminal cases; but it is not usual in cases of a criminal nature to press matters in evidence as to which any doubt might exist; but this prosecution is not conducted in the usual mode. My learned friend, the Attorney-General, is now attempting to offer in evidence what I submit to your lordships is clearly contrary to the ordinary rule. He is seeking to prove an important fact in this case, by an apparent admission on the part of the noble earl at your lordships' bar, without any evidence whatever that the noble earl was a party to that admission, or that he was aware of it, or that he knew any thing that was written upon the card at all. I ask your lordships whether this can be made evidence against the prisoner, to prove a fact which your lordships must now see, from the way in which this is pressed on the other side of the bar, is a most important fact in this prosecution; whether your lordships are prepared to say that that fact can be proved by the statement of a person not even known, for it does not appear who it was that gave the card. The witness speaks of a stranger that came up, and who he did not know at the time was a surgeon. It does not appear whether he gave it, or who gave it; but it does appear that, whoever gave it, Lord Cardigan never saw it, and did not know what was written upon it, and therefore it is not at all brought home to him. I do therefore submit to your lordships, that, upon the plainest rules of evidence, nothing written upon the card can be read in evidence against the noble earl.

Lord High Steward. The inconvenience of clearing the house is so great that I should rather venture to propose that the decision of this question, if your lordships should be called upon to decide it, had better be postponed.

Though no decision was ever arrived at, for the address on the card, when it came to be examined, did not carry the case any further, two names only being printed on it, there can be little question that it was not admissible in evidence.

The cross-examination of the miller's son, Sebastian Byron Dann, who was called upon to support his father's testimony, has been animadverted upon, not without reason, as a notable

specimen of the art, once too fashionable, of puzzling and confounding a witness. The process of making him at a loss to know whether he stood on his head or his heels was here fully exerted.

Did you not tell the Attorney-General that the spot where these gentlemen were, when you first saw them, was a hundred yards from the post-chaises?—Yes; then they walked about.

They were a hundred yards from the post-chaises?—Yes.

Were the post-chaises together there?—No.

Then how came you to say that they were a hundred yards from the post-chaises?—They were about a hundred yards from the post-chaises when I first saw them.

The chaises were not together?—No.

How far were the chaises from each other?—About a quarter of a mile.

Now, I only want you to explain your answer; how you came to say that the parties were a hundred yards from the post-chaises, if one chaise was a quarter of a mile from the other?—The parties were not together. There were two parties; two in each party. Then two of the gentlemen were about a hundred yards from one post-chaise, and two from the other.

Then do you mean that two of the gentlemen whom you afterwards saw kneel down were a hundred yards from one of the chaises, and the other two gentlemen were a hundred yards from the other chaise?—Yes.

And the two chaises were a quarter of a mile apart?—Yes.

Then the two gentlemen whom you afterwards saw kneel down, I suppose I may take it that they were about a quarter of a mile from the other two gentlemen?—One of each party knelt down. The gentlemen separated.

Did not you tell me just now that the two gentlemen that knelt down were a quarter of a mile from one of the chaises, and the other two gentlemen a quarter of a mile from the other chaise?—I meant that the gentlemen separated, and two of them met.

[*A former question and answer were then read.*]

Having had the previous question and answer read to you, will you explain what you mean?—I mean that when I first saw the gentlemen they were about a hundred yards off from the post-chaise, and then both the parties separated, and two of them came and met, and then walked about a little while together, and kneeled down.

At this time that you are speaking of, when the gentlemen knelt down, how far were they from you?—They were about two hundred and twenty yards.

Could you distinguish who the persons were who did not kneel down?—No; not at that time.

Could you at that time have told us whether Lord Cardigan was one of the parties that knelt down or not?—No, he was not.

How is it that you can take upon yourself to say that he was not one of the parties that knelt down, if you could not distinguish who the parties were?—I saw who they were. The Earl of Cardigan was not with them when they were kneeling down.

Then you tell their lordships now that you could distinguish them at two hundred and twenty yards distance?—I could distinguish them from the other two.

The miller's wife had the misfortune to undergo a similar ordeal, to have her reasoning faculties placed under the harrow by Sir William Follett.

I observe that you have all, you, and the witnesses before, said that the distance from your house to this spot was two hundred and twenty yards; has it been measured?—I think it has.

What do you suppose to be the distance from where you are standing now to the end of this house?—I do not know. I should not have thought it had been more than a hundred yards; not at first when I saw them.

Could you distinguish the countenances or features of any of the gentlemen standing at the other end of this house?—I mean I could see if they were red or pale when my husband went to them.

Can you see whether the gentlemen standing at the other end of this house are red or pale?—Yes, I can.

You are sure you can; are you quite sure of that? Look, can you distinguish whether the gentlemen are red or pale at the other end of the house? —I can see better on the common, where I am more accustomed to look.

Upon the common, where you can see best, can you distinguish the features of gentlemen two hundred and twenty yards off; and whether they are red or pale?—They looked to have red faces in the sun.

All the gentlemen had red faces, had they?—No, I do not know that all of them had.

Had they all red faces?—No.

How many had red faces? Can you tell me who has been telling you this story, or who has been examining you upon this subject?— No one.

Sir William Follett had never graduated at the Old Bailey, but this refinement of cross-questioning derived its edge and keenness from his misgivings of the case.

Upon the physician who attended the parties to the field being sworn, the Lord High Steward administered a dignified and opportune caution, to which he yielded implicit obedience.

"Sir James Anderson, with the permission of the House, I think it my duty to inform you, after the opening we have heard made by the Attorney-General of the facts of the case, that you are not bound to answer any question which may tend to criminate yourself."

Mr. Attorney-General. Of what profession are you?—I am a physician.

Where do you live?—New Burlington Street.

Are you acquainted with Captain Tuckett?—I must decline answering that.

Were you on Wimbledon Common upon the 12th of September last?—I must decline answering that also.

Were you on that day called in to attend any gentleman that was wounded?—I am sorry to decline that again.

Can you tell me where Captain Tuckett lives?—I must decline the question.

Has he a house in London?

Sir William Follett. He declines to answer the question.

I have already said that I decline answering the question.

Mr. Attorney-General. Where did you last see Captain Tuckett?

Sir William Follett. We have no right, my Lords, to interfere in this case; but the witness having several times declined to answer the question, I apprehend it is not regular for the Attorney-General, by circuitous questions, to endeavour to get him to answer.

Mr. Attorney-General. I have never pressed him in any question I have put. [*To the witness.*]—Do you decline answering any question whatever respecting Captain Tuckett?—Any question which may tend to criminate myself.

And you consider that answering any question respecting Captain Tuckett may tend to criminate yourself?—It is possible it would.

And on that ground you decline?—Yes.

Mr. Attorney General. Then, unless your lordships wish to ask any question of this witness, he may withdraw.

[*The witness was directed to withdraw.*]

Sir James Anderson might thus have been deaf and dumb, for all the service that could be derived from his testimony.

The next witness, Mr. John Busain, inspector of police at Wandsworth, removed all doubt as to the fact of a duel having been fought; and effectually dispelled the ingenious suggestion of Lord Audley, that the shots might proceed from people shooting small birds on the common. With the frankness of a soldier, Lord Cardigan had at once admitted to this officer the reason of his detention. He drove up in a chaise to the station-house door, and tapped for admittance. "I bowed to his lordship," said Busain, "and asked him what his business was. He said, 'I am a prisoner, I believe.' 'Indeed, sir,' said I; 'on what account?' The door was opened, and his lordship walked in. His lordship said, 'I have been fighting a duel, and I have hit my man; but not seriously, I believe; slightly; merely a graze across the back.' His lordship passed his hand in this way when he said 'a graze across the back.' He then pointed over his shoulder and looked over, and said, 'This gentleman also is a prisoner; my second, Captain Douglas.'"

Did you say any thing to his lordship?—His lordship passed his hand into his pocket; still he was a stranger to me; he passed his left hand into his right-hand pocket, and took out divers cards, and in the act of taking them out, some of them fell on the floor, and he presented me with his card, and I saw "The Earl of Cardigan, of the 11th Dragoons," I believe; "The Earl of Cardigan," at least. I saw his name, and I then alluded to the duel, and said, "Not with Captain Reynolds, I hope?" and his lordship spurned the idea of fighting a duel with one of his own officers.

What did he say?—"Oh no; by no means. Do you suppose that I would fight with one of my own officers?"

Their lordships wish you to repeat, as nearly as you can, the words of the Earl of Cardigan upon that occasion?—To the best of my recollection, his lordship's reply was,—when I said I hoped it was not with Captain Reynolds, he stood up erect, and seemed to reject it by his action with the utmost disdain, and said, "Oh no; do you suppose I would fight with one of my own officers?" Those were the words, to the best of my recollection.

Having deposed to Captain Tuckett appearing at the magistrate's office and giving his name, Sir William Follett hastily interrupted.

Was Lord Cardigan at that time present there?—He was on bail.

Was Lord Cardigan at that time present, is the question I ask you?—No, he was not.

The decisive stroke was again averted. To supply this proof the counsel for the prosecution called Mr. Walthew, a chemist in the Poultry, in whose house a Captain Tuckett occupied rooms, who spoke to his house as well as place of business, and was asked his christian names.

Sir William Follett. Just allow me. You say that he lives at No. 13, Hamilton Place, New Road; were you ever at that house?—No.

Mr. Waddington. You can cross-examine him upon that.

Sir William Follett. No; you ought to put the question yourself, to ascertain his means of knowledge.

Mr. Waddington. I am now asking on another point.

Sir William Follett. But that must be founded on the preceding.

Mr. Waddington. Not at all. I ask now what his christian names are.

Sir William Follett. Then I object.

Mr. Attorney-General. We may ask what are the christian names of the gentleman who took rooms at the Poultry.

Sir William Follett. That question can have no relevancy to the inquiry before your lordships, unless the person whose christian names they are inquiring into is connected in some way with the transaction; and I think it would be fairer on the part of the prosecution not to take an answer to a question they put into the witness's mouth, without ascertaining whether he does or does not know the fact to which he deposes.

There could be no doubt the question was admissible; there could be no legal objection to the inquiry what was the christian name that Tuckett went by who rented rooms of Walthew, at the Poultry. Fortunately for the accused, the only names he knew him by were Harvey Tuckett. No question was asked of him in cross-examination. Still baffled, the counsel for the prosecution called Mr. Codd, an army agent, who paid Captain Tuckett, of the 11th Light Dragoons, his half-pay, and knew his name to be Harvey Garnett Phipps Tuckett; but he paid the money at his own house in Fludyer Street, and had never seen him except there and at an insurance office. There was no link to connect this half-pay officer with the Captain Tuckett at whom the pistol was fired, and who afterwards was seen wounded in Hamilton Place. Again, not a question was asked in cross-examination. What an admirable contrast does this politic reserve present to the precipitancy in cross-questioning which has often clenched the fact in dispute, or, in Curran's phrase, "nailed the rap to the counter!"

The Attorney-General again tendered the card. The question of identity had become as interesting as the *dénouement* of an exciting drama; it absorbed the anxiously attentive audience, whose secret sympathies must have been with the accused.

The eagerness of his judges for the catastrophe, then at fever heat, was evidenced by Lord Brougham's inquiry: "Is this your case, Mr. Attorney?" The scene that follows is most dramatic.

Mr. Attorney-General. I should first wish to know whether that card is to be received or rejected?

Sir William Follett. I would suggest that the Attorney-General should answer the question of your lordship, because it may make a considerable difference as to our opposing or not the introduction of this card, whether that is the close of his case.

Mr. Attorney-General. I apprehend I am now in a situation to ask your lordships for your judgment, whether that card should be received or rejected.

Lord High Steward. You object to its being received, Sir William Follett.

Sir William Follett. Certainly, my Lord; and I should wish to address your lordships, if any doubt is entertained upon it.

Lord High Steward. Their lordships are ready to hear your objection.

Sir William Follett. Will you let me look at the card?

[*The card was shown to Sir William Follett.*]

Sir William Follett. My Lord, I do not think it necessary to object to this card being read.

[*The card was delivered in and read, having engraved upon it* "Captain Harvey Tuckett, 13, Hamilton Place, New Road." *And on the other side written,* "Captain H. Wainwright."]

Then was repeated, with no little agitation, by Sir William Follett, the query "Is that your case, Mr. Attorney?" and on his rejoinder, "This, my Lords, is the case on the part of the prosecution," his magnificent *diapason* of triumph.

"This being the case on the part of the prosecution, I shall venture to submit to your lordships that no case has been made out which calls upon the prisoner at the bar for an answer; and I think your lordships will see at once that my learned friends have failed in proving an essential part of their case. Your lordships will observe that every count of

the indictment contains the names of Harvey Garnett Phipps Tuckett.

"Now, my Lords, I apprehend that it is not necessary to cite any authority at your lordships' bar to show that the prosecutor is bound to prove the christian and surname of the person against whom the offence is alleged to have been committed, and that, if he fails in proving either the christian or the surname, he fails in the proof of his case. I think your lordships will see that there is no evidence whatever to prove that the person at whom the noble earl is charged to have shot upon the 12th of September was Mr. Harvey Garnett Phipps Tuckett. The evidence before your lordships would rather lead to the contrary presumption, if presumption could be allowed in such a case; but I apprehend it is not a case of presumption; but that positive evidence must be given by the prosecutor to prove the identity of the person mentioned in the indictment as being the party against whom the offence is alleged to have been committed.

"Now, your lordships will observe that the evidence is this: they have called a person of the name of Codd, who is stated to be an army agent, and who receives the half-pay of a Captain Tuckett, who was formerly an officer in the 11th Dragoons, and who states that the Mr. Tuckett for whom he received the half-pay is named Harvey Garnett Phipps Tuckett. Is there any thing at all before your lordships to identify that Mr. Tuckett with the person who is said to have been at Wimbledon Common on the 12th of September? There is nothing whatever. Mr. Codd does not know where that Mr. Tuckett lives; he never saw him at any place but at his own office in Fludyer Street, and once at an insurance office, shortly after his return from India. There is nothing at all to show, therefore, that that gentleman, for whom he received the half-pay, is in any way connected with this transaction. Then, my Lords, what is the other evidence on this point? A witness is called, who comes from the Poultry, and who states that a Captain Tuckett occupies rooms in his house, where he carries on the business of an Indian and colonial agent; and he states that

his name is Harvey Tuckett, but that he does not know his other christian names, and that he does not know where he lives. There is, therefore, no evidence whatever to connect the Captain Tuckett spoken of by Mr. Codd as bearing those christian names, with the Captain Tuckett spoken of by the other witnesses. There is not a tittle of evidence, there is not a scintilla of evidence, to connect that Captain Tuckett of whom Mr. Codd speaks with the gentleman who is supposed to have been engaged in this transaction, and, therefore, I submit that my learned friend has entirely failed in one essential part of the proof in this prosecution.

"My Lords, this point has been expressly decided in the case of the King *v.* Robinson, in Holt's Reports, page 595, and it is laid down in all the books upon the point, that it is essentially necessary to prove the christian and surname of the party against whom the offence is alleged to have been committed."

The prosecution had broken down; the link of identity was wanting; the failure in proof of nomenclature was complete: the moment for adjudication was come, and the Lord High Steward announced, in his clear, deep voice, "Strangers must withdraw."

The jealousy of the Attorney-General at experiencing a professional defeat was fully roused, and he solicited permission to reply.

"Your lordships will allow me to say a few words in answer to the objection. My Lords, the question is, whether there be any evidence whatever to prove the fact of the christian names of Captain Tuckett, the gentleman wounded. If there be the smallest scintilla of evidence on this point, the prosecution cannot be stopped upon this ground. We are now in a situation as if the trial were before a jury, and at the close of the case for the prosecution an objection should be made that the learned judge should direct the jury to acquit, upon the ground that there is no evidence at all for their consideration. My Lords, I say that if this case were before a jury there would be abundant evidence for the consideration of a jury, from which the jury would have no difficulty in inferring that the name of the

party wounded in this case was Harvey Garnett Phipps Tuckett.

"Now, my Lords, how does the case stand? My learned friend withdrew all objection to the reading of the card. Well, then, the gentleman who was wounded, at whom the Earl of Cardigan shot on the 12th of September, was a Captain Tuckett. It was Captain Harvey Tuckett. We have got so far as to one of his names. Now, my Lords, how does it stand with regard to the rest? Am I obliged to call the clerk of the parish where he was baptized, in order to prove his baptismal register? Am I obliged to call his father or his mother, or his godfathers and godmothers, to prove the name that was given to him at the baptismal font? I apprehend that such evidence is wholly unnecessary, and that if, from the facts that are proved, any reasonable man would draw the inference that we wish to be drawn, there is abundant evidence to be submitted to a jury, and to be submitted to your lordships.

"My Lords, we have it in evidence, and I suppose my learned friend will not deny that there is abundant evidence to show, that the Captain Tuckett that was wounded lived at No. 13, Hamilton Place, New Road. There the witness Dann goes for him three times; each time he asks for Captain Tuckett, and each time he is introduced to a gentleman answering to the name of Captain Tuckett. Therefore your lordships will have no difficulty in believing that the Captain Tuckett who lives at No. 13, Hamilton Place, New Road, is the Captain Tuckett who fought a duel with the Earl of Cardigan on Wimbledon Common on the 12th of September. Now, my Lords, we go by steps. Is there any doubt that it was that Captain Tuckett who took the premises, No. 29, in the Poultry? At the time that he did so, he gave a reference to No. 13, Hamilton Place, New Road. Then, although there is no positive, direct, and demonstrative evidence, your lordships would not doubt that there is sufficient evidence to show that the person who took this place of business in the Poultry under Mr. Walthew was the same Captain Tuckett who lived at No. 13, Hamilton Place, New Road, and who was the antagonist of

the Earl of Cardigan on the 12th of September on Wimbledon Common.

"Then, my Lords, we have only one other stage, and that is, to see whether that Captain Tuckett is the Captain Tuckett of whom Mr. Codd speaks. Mr. Codd says that the Captain Tuckett of whom he speaks, and whose name he proves to be Harvey Garnett Phipps Tuckett, had been in the 11th Hussars. May it not fairly be inferred by any one of your lordships that this Captain Tuckett, who had been in the 11th Hussars, who had retired three or four years, and who had received his pay quarterly, was the same Captain Tuckett who had a place of business in the Poultry, who had a house at No. 13, Hamilton Place, New Road, and who fought the duel on the 12th of September on Wimbledon Common? Is there not evidence from which that identity may be fairly inferred?

"My Lords, I believe there is no human being who, having heard this evidence out of a court of justice, would for one moment hesitate in drawing the inference; and I apprehend that what would be sufficient to convince a reasonable man out of a court of justice ought to convince a person sitting as a judge in a court of justice, if that from which the inference is to be drawn is to be received according to the rules of evidence. Now, my Lords, would any person out of a court of justice doubt for one moment that this Captain Tuckett of whom you have had evidence is the same individual who fought the duel with the Earl of Cardigan upon the 12th of September? Well, then, if that inference would necessarily be drawn out of a court of justice, shall it be said that in a court of justice there is not any scintilla of evidence from which such an inference can be drawn? My Lords, I do think that this would be a most unsatisfactory conclusion of such a trial; and that your lordships will by no means put a stop to this inquiry upon such an objection."

The reply of Sir William Follett was most clear, triumphant, and conclusive. He excelled in a reply, and tore to shreds the ingenious sophistries of the Attorney-General.

"My Lords, I will trouble your lordships very shortly indeed in answer to the Attorney-General. It may be

a very unsatisfactory termination of this prosecution to the parties conducting it. It may be, that after all the care and search they have made, they have failed in proving a very essential part of the case for the prosecution. But I apprehend that this is not a case in which the noble Lord at the bar is to appeal to the honour or the consciences of your lordships. The question is here, whether the prosecutor has given any evidence at all to prove an essential part of the case for the prosecution; and I think that in a very few words I can show your lordships that he has given no evidence at all.

"My learned friend asked whether the clerk of the parish, or the father or mother of Captain Tuckett, are to be called to prove his christian names. That is not my objection, and the Attorney-General knows it perfectly well. It is not that we object that the clerk of the parish or the parents should be called; but what we object is this, that they have called a person of the name of Codd, who has proved that he knows a Captain Tuckett who bears these christian names, but he gave no evidence at all, — no scintilla of evidence (I will take the very words of my learned friend the Attorney-General), — no scintilla of evidence, to connect that Captain Tuckett with the gentleman who was upon Wimbledon Common on the 12th of September.

"Your lordships will observe that it depends altogether upon the evidence of Mr. Codd, because Mr. Codd is the person who is to speak to the christian name, and he is to show that the person of whom he speaks is the Captain Tuckett to whom the rest of the evidence refers.

"My learned friend the Attorney-General asked whether any person out of this house would doubt that they were the same person. May I ask whether that is the way in which a prosecution for a criminal offence, or even a proceeding in a civil matter, is to be tried? That your lordships out of this house, after hearing all that has been said about this matter, and all that has been written in the newspapers day after day, may be satisfied that the Captain Tuckett spoken of by the witness is the gentleman who was at Wimbledon Common on the 12th September, is one thing. It is possible

that you might draw that inference. But your lordships are now sitting as if you had never heard one word of this matter before. You are now sitting as judges to decide upon the evidence in the case. Your lordships are to dismiss from your minds every thing that you have heard or read in relation to it, and you are then to say whether, because a Captain Tuckett, who was formerly in the 11th Dragoons, bears a certain christian name, he is the same Captain Tuckett who fought a duel upon Wimbledon Common.

"My learned friend the Attorney-General, I will venture to say, from the mode in which he answered this objection, knew perfectly well that he had failed in proving his case; and that was the meaning of his going step after step in the manner in which he did. He knows that there is no evidence to connect the person of whom Mr. Codd is speaking with any person connected with this transaction. My learned friend said that he obtains from the card one of the christian names '*Harvey* Tuckett.' Is that to be proof that the person named in this indictment 'Harvey Garnett Phipps Tuckett' is the same person? I ask whether any one of the judges would leave that question to a jury. There might be two persons of the name of 'Harvey Tuckett.' Nay, when my learned friend is referring to matters out of this house, we know that in the very regiment commanded by the noble lord at the bar there were two gentlemen of the same surname and, I believe, of the same christian name. But the question is this,—not what your lordships know out of this house, nor what your lordships may surmise or conjecture,—but, sitting as judges in a criminal case, looking at the evidence alone, is there any evidence before your lordships to prove that the gentleman who was upon Wimbledon Common bears the christian name and surname of 'Harvey Garnett Phipps Tuckett?' My Lords, I submit that there is no evidence of it whatever; and, however unsatisfactory a termination it may be to the persons conducting this prosecution, that your lordships will feel that they have failed in an essential part of it, and that the prisoner now at your lordships' bar ought not to be called upon for any defence to this case."

Before the Peers withdrew, Lord Denman justified the course he had adopted.

"When this objection was taken, I thought the proper course would be for strangers to withdraw; and I think that is the proper course, when, in a criminal court, an objection is taken that there is no evidence to go to the jury, that the judge should then make up his mind whether there is such evidence or not. The learned counsel, however, did not object to the argument of the Attorney-General, and therefore I did not think it right to interpose, in order to prevent his being heard. But I wish to say, with a view to the general administration of criminal justice, that the utmost that is ever required from the counsel for the prosecution who is so challenged is to point out those parts of the evidence upon which he relies to make out the case to be submitted to the jury. I do not recollect any case in which an argument has been entered into upon such an occasion. Generally speaking, I believe the practice has been to prevent any such argument from being heard in that stage of the case."

During the deliberation of the House with closed doors, the Lord High Steward enforced the failure of proof; and gave his opinion that the evidence was insufficient to make out the charge in so pointed a manner, that his reasons for pronouncing a sentence of acquittal were published, though not in conformity with precedent, by special direction of the House.

"The defect upon which the learned counsel rely is this: that no proof has been adduced that the party at whom the loaded pistol was directed bore that name.

"It is proper, in the first place, to observe that the law certainly requires such proof to be given. The law would give no countenance to the opinion that, where the injury itself is, in fact, well established, the name or names borne by the injured party may be considered as immaterial. If he is unknown, a special provision is made for that case; but he ought to be truly described, if he is known, by those who prefer the bill of indictment before the grand jury; they ought to have some evidence of his using or bearing that

name. The offence is, indeed, in its own nature the same, whether committed against the person of Thomas or of John; but the fact must be truly stated, and every material allegation must be proved; and if the act is charged as committed against John, and proved to have been committed against Thomas, that variance entitles the prisoner to an acquittal; and if it is not proved to have been committed against John, the case equally falls to the ground. The reasons on which this rule of practice may have been founded your lordships will not expect me to discuss. The existence of the rule, and its constant application, admit of no doubt. There would be little hazard in asserting that no year passes without some example of acquittals taking place in some of the courts by reason of mistakes or defects of this kind. Doubts have sometimes arisen on the sufficiency and propriety of the designations given by bills of indictment to parties injured: and the fifteen judges, to whom reference has been made on such occasions, invariably acting upon that rule, have decided cases of the utmost importance in accordance with it."

After recapitulating shortly and clearly what the witnesses had sworn, the Lord High Steward continued: — "Mr. Walthew knows nothing whatever of the party's numerous names, and Mr. Codd does not appear even to have heard of his Captain Tuckett.

"Here then is an absolute want of circumstances to connect the individual at whom the pistol was fired, and who afterwards was seen wounded in Hamilton Place, with the half-pay officer known to Mr. Codd as bearing the names set forth in the indictment on which your lordships are sitting in judgment. For the mere fact of the wounded person bearing some of the names used by the half-pay officer is no proof that the former and the latter are the same: and the representation by that officer of his having held a commission in the same regiment of which Lord Cardigan told the policeman that he himself was colonel, (which, coupled with the actual receipt of half-pay, may sufficiently prove that fact,) cannot, I apprehend, be turned into a presumption that those two individuals would meet in hostile array. Here are two

distinct lines of testimony, and they never meet in the same point.

"In the course of the argument at the bar in behalf of the prosecution, your lordships were asked what proof of a name could reasonably be expected, and whether justice ought to be defeated for want of the baptismal register of a party described. If I were bound to give an answer to this question, I should say in general terms that whatever fact requires proof in the course of any judicial proceeding ought to be made out by adequate means by the party on whom the burden of proof is cast by the law, — that is, by the prosecutor of an indictment, where the plea of Not Guilty puts in issue all the facts that go to make up the offence charged. But it was not contended at the bar that any proof from the baptismal register was indispensable, or that it would not be enough to produce evidence of the party's bearing, using, or being known by the name attributed to him. It was not urged that Mr. Codd's knowledge that the person of whom he spoke used the four names in the indictment might not rationally convince your lordships that the four names belong to that person; but it was urged, that the person using and owning the four names was not shown to be the same person who, under the name of Captain Harvey Tuckett, had been engaged in a duel fought on Wimbledon Common.

"No fact is easier of proof in its own nature, and numerous witnesses are always at hand to establish it with respect to any person conversant with society. In the present case the simplest means were accessible. If those who conduct the prosecution had obtained your lordships' order for the appearance at your bar of Captain Tuckett, and if the witnesses of the duel had deposed to his being the man who left the field after receiving Lord Cardigan's shot, Mr. Codd might have been asked whether that was the gentleman whom he knew by the four names set forth in the indictment. His answer in the affirmative would have been too conclusive on the point to admit of the present objection being taken.

"Several other methods of proof will readily suggest themselves to your lordships' minds. Even if obstacles had been interposed by distance of time and place, by the poverty of

those seeking to enforce the law, by the death of witnesses, or other casualties, it cannot be doubted that the accused must have had the benefit of the failure of proof, however occasioned; and here, where none of those causes can account for the deficiency, it seems too much to require that your lordships should volunteer the presumption of a fact, which, if true, might have been made clear and manifest to every man's understanding by the shortest process. Your lordships were informed that no person out of doors could hesitate, on the proof now given, to decide that the identity is well made out. Permit me, my Lords, to say that you are to decide for yourselves, upon the proofs brought before you, and that nothing can be conceived more dangerous to the interests of justice, than for a judicial body to indulge in any speculations on what may possibly be said or thought by others who have not heard the same evidence, nor act with the same responsibility, nor (possibly) confine their attention to the evidence actually adduced.

"If, my Lords, the present were an ordinary case, tried before one of the inferior courts, and the same objection had been taken in this stage to the proof of identity, the judge would consult his notes, and explain how far he thought the objection well founded, and I apprehend that the jury would at once return a verdict of acquittal.

"Your lordships, sitting in this High Court of Parliament, unite the functions of both. I have stated my own views as an individual member of the court, of the question by you to be considered, discussed, and decided. Though I have commenced the debate, it cannot be necessary for me to disclaim the purpose of dictating my own opinion, which is respectfully laid before you, with the hope of eliciting those of the House at large. If any other duty is cast upon me, or if there is any more convenient course to be pursued, I shall be greatly indebted to any of your lordships who will be so kind as to instruct me in it. In the absence of any other suggestion, I venture to declare my own judgment, grounded on the reasons briefly submitted, that the Earl of Cardigan is entitled to be declared Not Guilty."

To the disappointment of a hostile public, excited by

topics of prejudice against the accused, and deeply to the mortification of political partizans, who had anticipated a verdict of Guilty with feelings of malignant triumph, anxious to ascertain how a Tory majority would deal with a Tory peer—innocent by the code of honour, but guilty of an infraction of the law,—their lordships pronounced his acquittal by unanimous sentence; the Duke of Cleveland alone varying the reply of "Not Guilty, upon my honour," by declaring "Not Guilty *legally*, upon my honour." The white staff of the Lord High Steward was broken in two; and the first commission in this century—perhaps the last—to try a peer on a charge of felony, declared to be dissolved.

NOTES TO THE TRIAL OF LORD CARDIGAN.

Note 1.

Lord Campbell, in a note to his speech on this trial, has gracefully defended his remark, that the charge did not imply any degree of moral turpitude. "I was, I confess, much hurt by an accusation from very respectable quarters, that my address contained a defence of duelling, and had a tendency to encourage that practice. Nothing could be further from my intention, and I do not think that the language I employed can fairly receive such a construction. Instead of referring to other occurrences from which the noble earl had at the time incurred great unpopularity, I considered it my duty to confine the attention of his judges to the charge which he had to answer before them. I continue to think that to engage in a duel which cannot be declined without infamy, and which is not occasioned by any offence given by the party whose conduct is under discussion, whether he accepted or sent the challenge, although contrary to the law of the land, is an act free from moral turpitude; and to induce a just and enlightened tribunal to enforce the law of the land, there can be no propriety in trying to load the accused with unjust obloquy.

"There is a great difference between a general approbation of duelling and admitting that an officer in the army may be under the necessity of fighting a duel, to preserve his station in society, and to prevent dishonour from being brought upon himself and his family. I consider, that to fight a duel must always be a great calamity, but it is not always, necessarily, a great crime.

"No one can more sincerely rejoice than I do, that, from increased sobriety of habits and refinement of manners, the practice of duelling

has become so rare; and that, from a change of feeling in the public mind, instead of there being any necessity for a young man entering life to show his courage by a duel, he is worse looked upon if he has been involved in any such affair, and he has a subject of explanation, instead of boast, for the rest of his days. Even in Ireland, a duel confers no *éclat;* and a recommendation of duelling from a judge sitting on his tribunal would now excite as much astonishment in the Four Courts as in Westminster Hall. We may hope that, from the progress of this feeling, the practice may almost become extinct, and that we shall not, in future, witness that conflict between law and manners which arises on a trial for duelling."*

NOTE 2.

"Duelling is the only crime," says a writer in the Quarterly Review, "into which an upright man, wanting in moral firmness, can be impelled by the law of honour. Surely there could be no difficulty in putting an end to this abominable practice, by wholesome laws. Appoint six months' imprisonment for the offence of sending a challenge or accepting it; two years if the parties meet, and if one falls, transport the other for life: appoint the same punishment, in all cases, for the seconds; and from the day on which such a law should be enacted, not a pair of duelling pistols would ever again be manufactured in this country, even for the Dublin market."

* Lord Campbell's Speeches.

THE TRIAL

OF

FRANÇOIS BENJAMIN COURVOISIER

FOR THE MURDER OF LORD WILLIAM RUSSELL,

AT THE CENTRAL CRIMINAL COURT,

BEFORE CHIEF JUSTICE TINDAL, AND THE RIGHT HON. BARON PARKE,

On Thursday, Friday, and Saturday, June 18, 19, and 20. 1840.

Counsel for the Prosecution: Messrs. *Adolphus*, *Bodkin*, and *Chambers*.

For the Defence: Mr. Charles *Phillips* and Mr. *Clarkson*.

NEVER was the West-end of London more rudely disturbed from its wonted state of unruffled placidity than on the morning of Monday, the 6th of May, 1840, by the startling intelligence — almost too fearful to be true — that Lord William Russell had been found murdered in his bed, at his private dwelling, Norfolk Street, Park Lane. The rank and connections of the aged nobleman, his character and name, the circumstances of mystery attending his supposed assassination, the feeling of insecurity and terror diffused through private families by his violent death — such an illustrious tragedy in that part of the metropolis seeming a new horror — this variety of causes raised a sensation of curiosity, excitement, and alarm, unprecedented among the aristocracy. Like the death's-head at an Egyptian feast, the thrilling subject was introduced to the notice of every guest, and cast a mournful shadow on the fashionable gaiety of the season. The suspicion directed to the servants in the house, and to the police — the first ineffectual search of the valet's

box, and subsequent discovery of linen spotted with blood — the loss of various articles of plate — the finding the stolen watch and rings in the pantry — and final commitment of Courvoisier on the charge of murder — this singular series of circumstantial evidence which left little moral doubt of his guilt, but the legal proof, far from conclusive, kept the full tide of public interest at its highest point, without a single ebb, to the day of trial.

Accordingly, on the 18th of June, a full stream of rank and fashion flowed to the dark and dingy precincts of the Old Bailey, and thronged the entrance as at the Opera on the night of a new ballet. Nor was the love of excitement disappointed. Each day in the forensic drama introduced some new and startling incident, which kept the catastrophe in suspense.

Mr. Adolphus, in his opening speech, emulated the fame of Garrow on the prosecution of Patch, and of Gurney in stating his case against De Berenger and Lord Cochrane; so artful and ingenious, sometimes sophistical, were his innuendoes and inferences of guilt.

The proofs on the first day left the person of the assassin involved in mystery; the doubts thrown upon some parts of the evidence of the housemaid, and the decisive overthrow of the policeman Baldwin by Mr. Phillips, in his severe cross-examination, afforded no slight chance of an acquittal. As if by a special interference of Providence to reveal and punish atrocious crime, the missing plate was discovered on the very day on which the prisoner stood at the bar for his deliverance, and Madame Piolaine, at whose house he had left it a few days before the murder, came to the Criminal Court, and recognised Courvoisier in the dock. He saw her, and felt that his doom was sealed; and under the agonies of an awakened conscience, acted next morning as if to prevent the remote possibility of escape.

The following extraordinary narrative is taken from Mr. Phillips's own report, when compelled by the importunity of friends, indignant at unjust charges, to break a nine years' silence.

"It was on the second morning of the trial, just before

the judges entered, that Courvoisier, standing publicly in front of the dock, solicited an interview with his counsel. My excellent friend and colleague, Mr. Clarkson, and myself immediately approached him. Up to this morning I believed most firmly in his innocence, and so did many others as well as myself. 'I have sent for you, gentlemen,' said he, 'to tell you I committed the murder.' When I could speak, which was not immediately, I said, 'Of course, then, you are going to plead guilty?' 'No, Sir,' was the reply, 'I expect you to defend me to the utmost.' We returned to our seats. My position at this moment was, I believe, without parallel in the annals of the profession."

Mr. Phillips resumed, as soon as the judges met, what must have been then a thankless and oppressive office; but he would have deserted his duty as an advocate, if he had not attempted—thus constrained by his retainer and his client's entreaty—to perform it as effectively as before. He and his colleague exposed ably the undue zeal and over-activity of the police: but their discoveries, and the fresh evidence procured at the eleventh hour, led to the inevitable conclusion, that the same hand which took the various articles of his master's plate to Leicester Place, concealed the rings and other valuables where they were found, and, to escape detection, deprived their owner of life.

The speech, indeed, of Mr. Phillips was most effective and eloquent, moving some of the jurors to tears, and tending to snatch the prisoner, if any efforts of rhetoric could, from the misty shadows of death, which were then creeping around him. Most justly did he deserve his doom, and pity would be wasted on his fate; but the laurel-wreath is due of right to his forensic champion who could, with persuasive power, in the face of such a dense array, battle for his life. Parts of the speech may be censured by correct taste, as too florid and impassioned; but the style of oratory in our courts has of late condescended too much to the plain and homely, and prosaic; the *humile dicendi genus* has become so prevalent, that even an excess of figure — an appanage of ornament —, may be tolerated for the sake of contrast, — an excellent antithesis to the household words in which English lawyers

delight. Another sign of excellence, the address was well calculated to propitiate the jury, and took good aim at the verdict.

The summing-up of Chief Justice Tindal put the facts of the case too calmly and clearly to the sound common sense of the twelve honest gentlemen in the box, to prevent their being led away by any sophistical comments on the evidence, or appeals to the passions; and on the afternoon of the third day, after a deliberation of more than an hour, all suspense was terminated by their verdict of Guilty. Immediately afterwards, the confession of the convicted client was divulged, and a fierce controversy has raged from that time to the present — *adhuc sub judice lis est*, — whether Mr. Phillips was justified in what he said and did. The question is too fraught with interest to the profession and to the public generally, not to deserve a full consideration.

That Mr. Phillips never professed his own belief in his client's innocence, is now admitted. It is also in proof that he did not invite the confession, or go into the prison and converse with the prisoner, indirectly leading him to confess. He went to his side of the dock at Courvoisier's request, being informed that he had something to communicate, as any other counsel would; and then the prisoner blurted out this strange disclosure, 'I did commit the murder.' If he had anxiously sought to embarrass his only stay, and prejudice the defence, he could not have acted more dexterously for the purpose. Having thus obtruded a most unseasonable avowal, he would not permit his counsel to act upon it, but insisted upon his defending him to the utmost. They totally mistake the rights and duties of the profession who pretend that Mr. Phillips ought to have abandoned his client, and thrown up his brief. He had not confessed aloud in open court, he had pleaded not guilty, and the jury were sworn to decide his guilt according to the evidence: by that alone, so far as affected the trial, he was to be justified, and by that alone to be condemned. To have revealed his private confession, would have been as base as in the Romish priest to betray the secrets of the confessional. The fiduciary character of counsel to his client, led to this rash and ill-

advised communication. But it was a sacred secret, not to be whispered abroad. It is impossible to blame a gentleman of extreme sensibility, placed in a new and very embarrassing situation, for consulting the most eminent and best qualified in the profession, as to the course he should adopt. By thus appealing to the oracles of justice, he proved, if proof were necessary, his anxious wish to act according to the most rigid and scrupulous sense of honour. Had full time been given for reflection, perhaps it would have been a more judicious course to have rejected all further mention, as far as was possible all consideration, of the enforced confidence, and, resuming his arduous duties on the trial, to have watched the evidence and tested the clearness of the proofs. In the profession there is, there can be, but one voice as to the necessity for Mr. Phillips, thus importuned, continuing the defence. If the advocate must persist in defending a guilty client, who had retained his professional services, and insisted on his not renouncing a half-performed engagement, he is equally bound to defend him with all his might and all his strength. Mr. Phillips did gird himself to the task, and summon his whole energies to the painful labour, though nervously oppressed with the sense of an overwhelming secret, and the sting of a message which Courvoisier had sent, subsequent to his declaration, that he considered his life to be in his hands. The dread of unconsciously to himself permitting this private information to cripple and deaden his exertions, must have sharpened the strictures which the eloquent and sensitive advocate made upon those parts of the evidence that invited animadversion, and must have given a keener edge to his comments on those witnesses who seemed to press unfairly on the criminal. Bearing this in mind, the natural effect of a confession so inopportunely made, we may consider whether Mr. Phillips overstepped the line of duty in his reflections on Sarah Mancer and on the police; for both of which he has been exposed to grave and, we believe, unwarranted censure. When, on the first day's trial, he rose to cross-examine the housemaid, it was uncertain whether all, or some, or any of the servants had been implicated in the guilt of murder. She had spoken before the coroner of seeing her master murdered

in his bed, having actually seen a few drops of blood on the pillow,—an inaccurate phrase, and nothing more. After the cross-examination, and before his address to the jury, Courvoisier confessed. In his speech for the defence it was necessary that counsel should remark upon Mancer's evidence, and notice what appeared worthy of note, or invited suspicion. He expressly disclaimed all intention to criminate the female servants as principals or accomplices in the crime.

"God forbid that any breath of his should send tainted into the world, persons perhaps depending for their subsistence upon their character. It was not his duty, nor his interest, nor his policy, to do so." With this disclaimer, he commented on the doubtful and obscure parts of their evidence.

"The prisoner had seen his master retire to his peaceful bed, and was alarmed in the morning by the housemaid, who was up before him, with a cry of robbery, and some dark, mysterious suggestion of murder. 'Let us go,' said she, 'and see where my Lord is.' He did confess that that expression struck him as extraordinary. If she had said, 'Let us go and tell my Lord that the house is plundered,' that would have been natural; but why should she suspect that anything had happened to his lordship? She saw her fellow-servant safe: no taint of blood about the house, and where did she expect to find her master? Why, in his bedroom to be sure. What was there to lead to a suspicion that he was hurt? Courvoisier was safe, the cook was safe, and why should she suspect that her master was not safe, too?"

Mr. Phillips also insisted that her evidence before the coroner varied from that given in court; and so it did, not in such a material point as to invalidate her credit, but sufficient to justify a remark.

"The depositions taken before the coroner were now before the learned judges, and perhaps they would consider it their bounden duty to tell the jury whether that woman swore before the coroner as she did before the Court. His conscience was clear; he had discharged his duty by throwing out that suggestion. The question he had put to the witness was this: — 'Upon the oath you have taken, did you

not tell the coroner that you saw — instead of some blood on the pillow — his lordship murdered on the bed?' That was matter for the jury to consider; he would now pass on."

If these strictures were warranted by the evidence, the counsel acted correctly in urging them; and that the confused and embarrassed statements of Mancer did admit of two interpretations, none who read her evidence can deny.

Her equivocal and inconsistent answers might possibly betray some contrivance, whether Courvoisier was guilty or not; and this was the whole extent of the aspersions on the female servant that a speech of three hours contained. Still less was Mr. Phillips to be precluded from animadverting on the conduct of the police if, stimulated by the hope of reward, or fired with eager desire to avert the possible discredit to their vigilance of a nobleman being murdered and the assassin escaping undetected, they swore too hardily, and if some supposed practice came to light, of tampering with the box and clothes of the prisoner.

The first policeman who was called, Baldwin, shuffled so glaringly when pressed as to his knowledge of a reward, that Chief Justice Tindal desired the jury to place no reliance on his testimony, and to dismiss it altogether. It was a remarkable fact, that when the box was first carefully searched, not an article of dress stained with blood could be found; that afterwards gloves spotted with blood should be discovered; and on a third search, at the very top of the box, two handkerchiefs dabbled with blood. These suspicious articles of dress might have escaped the first minute search, but they might have been placed there for a purpose; and some of those who suspected the valet's guilt might be active in furnishing further proofs to strengthen their opinion. It was also elicited that Pearce, another policeman, had endeavoured to entrap the prisoner into a confession, a course pointedly denounced by the humanity of our laws. Surely the counsel might comment strongly on this state of facts, ambiguous and condemnatory of the actors as they appeared, and harsh phrases or epithets need not be scanned too severely, supposing they could have practised unfairly with the proofs. The following were the orator's indignant com-

ments: — "Tedman searched his trunk on the 6th, and found nothing in it. Now what would an apprentice policeman of the old school have done? For the interests of justice it was his bounden duty to have corded and sealed that trunk, and put it in some place of safety, where no miscreant, tempted by a reward of 400*l.*, should have an opportunity of introducing proofs of guilt; but it was left open to all the gang of police in the house, and to the maid servants. Tedman goes on the 8th for an honest reason, and shakes a pair of bloody gloves from it? Who put the gloves there whilst the man was in gaol? Would he, knowing they were there, have sent the police to examine it? Tedman has not recourse to the scoundrel's excuse that he did not search minutely. Was there not practice in this.

"'Thus bad begins, but worse remains behind.'

"Collier, who would not go to the trunk without a witness, goes there on the 18th, and finds at the very top two blood-stained handkerchiefs, marked with the prisoner's initials. Tedman saw nothing of them on the 6th, they were not seen on the 8th; who put them into the trunk? Not Courvoisier; he was in the dungeon. What villain had been at work? He supposed he was not going too far in saying that the trunk had been practised on. 'Look here, Sir,' said Pearce to Courvoisier, 'dare you look me in the face?' Merciful God! was there any exhibition on earth so likely to strike him dumb with horror as the proofs of the murder lying before him; and that miscreant challenging him to look him in the face? He did look him in the face, and answered him, 'I see them, I know nothing about them; my conscience is clear, I am innocent.'"

The learned counsel animadverted in very harsh terms upon the testimony of this witness, charging him with an attempt to intimidate the prisoner, and thereby to extort from him a confession of the murder. He also condemned the conduct of Mr. Mayne and Mr. Hobler in permitting Pearce to hold that interview with the prisoner. "Such treatment was worthy only of the Inquisition. Yet the fellow who did all this told the jury he expected to share in the plunder, the 400*l.* reward,

which was to be divided over the coffin of Courvoisier! He had hoped the days for blood-money were past. Next came Baldwin, who had done his best, in the work of conspiracy, to earn the wages of blood. He swore well, and to the purpose; he did all he could to send a fellow-creature 'unhouseled, unanointed, unaneled,' before his God. That man equivocated and shuffled, and lied on his oath as long as he could, pretending never to have heard of the reward, because he was no scholar, although every wall in London was blazoned with it."

Some severe censures were also dealt by the Westminster Review on the manner in which Mr. Phillips treated Madame Piolaine. There was no time for ascertaining her character, or the character of her house. By no fault of the prosecutor, the witness was sprung upon the prisoner at the last moment, without any previous examination, or time for inquiry. She might have received the goods honestly, or with a guilty knowledge, — might have been an innocent party, or an accomplice. The council exercised his undoubted right in trying her credit. His passing remark on the neighbourhood of Leicester Place would be best appreciated by those who had most knowledge of the locality. "He hoped the jury knew something of Leicester Place. If they did, they knew the character of this hotel, with a billiard-room attached to it, where, unlike at a respectable hotel, any stranger, not being a guest, might enter and gamble."

The last charge in the long articles of impeachment was the reported solemn protest that the Omniscient God alone knew who committed this crime; an asseveration at variance with the fact, as Mr. Phillips himself knew, at the time he spoke, the person who had done it. The report, we are informed by Mr. Fortescue, the barrister, is, in this passage, inaccurate. He had been attracted to the court by the interest of the trial, had listened attentively to the speech, had his attention immediately called to it, and can vouch for the following being the very words spoken: —

"But you will say to me, if the prisoner did it not, who did it? I answer, ask the Omniscient Being above us who did it; ask not me, a poor finite creature like yourselves;

ask the prosecutor who did it. It is for him to tell you who did it; it is not for me to tell you who did it; and until he shall have proved, by the clearest evidence, that it was the prisoner at the bar, beware how you embrue your hands in the blood of that young man,—violate the living temple that the Lord himself hath made, — and quench the spirit in that clay which the breath of the Lord hath kindled."

This being the remarkable passage actually uttered, Mr. Phillips stands exonerated of making any positive asseveration. Commenting on the facts before the jury, he exercised a counsel's right in urging this emphatic appeal. The assertion, that Mr. Phillips volunteered or expressed his own belief in Courvoisier's innocence, is untrue; the charge, that he declared none but the Omniscient Deity knew the murderer, unfounded — a mistake attributable to the change of phraseology in the report; the imputation on his impeaching the veracity of several witnesses for the prosecution, a misconception of the counsel's duty, if he has a right to comment on the evidence, and draw such fair inferences as that evidence will admit of, be his private conviction what it may.

We need not wonder that, with such a strong case in his favour, the testimony of the two admirable judges who presided, C. J. Tindal and Baron Parke (and no testimony can rise higher than theirs), should exculpate the orator from all blame. We rejoice, for the credit of an illustrious member of the profession, now invested with the robes of magistracy, who has embellished both the Irish and English bar by his oratory, and paid most honourable suit and service to literature, that the topics of censure, when fairly examined, admit of such complete explanation, and that the eloquent pleader should stand *rectus in curiâ*, acquitted on the evidence. For the sake of those who disparage our system of advocacy as inconsistent with truth and justice, it may be expedient to discuss, as a matter of general interest, apart from the personal question, the rights and privileges of the bar in the defence of prisoners.

Truth may be best attained, and justice most satisfactorily administered, by a full discussion and thorough sifting of all the facts, by their complete examination under all hues,

and in every kind of light, but it would be misconceiving the office of the advocate to assume, that this must form a part of his function, the end and aim of his labours.

The first duty of the prisoner's counsel is anxiously to take care that his client be not illegally convicted. But he will be convicted illegally when the indictment is technically wrong,—when improper evidence is admitted, or when evidence not worthy of belief has been accredited. It is no breach of an advocate's duty to address the jury, though he may casually know, without being permitted to reveal, that the prisoner has confessed. The counsel for the Seven Bishops knew that they had admitted their handwriting to the petition before the incensed king in council, yet shrunk not from objecting that there was no proof of the fact, and had almost succeeded in defeating the criminal information upon that technical objection. Were Finch and Somers ever censured for availing themselves of defective proof in court, and not importing into the case their own private knowledge and belief? Why should the counsel be blamed for commenting on evidence that may, or may not, appear false to persons who have not themselves a positive knowledge that the prisoner is guilty. The jury are sworn to decide on the evidence brought before them; the fact that the prisoner did commit the crime will not make their verdict less erroneous if they have decided against him on insufficient evidence; it will only make their decision less a subject of regret. Their duty is well described by Curran in his prosecution of O'Brien for murder:—"They must feel an irresistible and coercive force acting on them from the weight of the evidence before, by their verdict, they pronounce that melancholy sentence which would remove a murderer from the face of the earth." The most guilty may still require that his counsel should point out the defects, obscurities, and inconsistencies of the evidence for the prosecution,—that he should warn the jury against convicting, unless coerced by the evidence into a full conviction of the prisoner's guilt. If burdened by a confession which he cannot divulge, he will betray it, should the counsel's speech abstain from urging those remarks on defective testimony which he would have made irrespective of

the confession. He has a clear right to cross-examine a hostile witness. A verdict may be morally correct and logically wrong. Is a counsel to refrain from argument when convinced that his client is guilty? It is very easy for a person, misanthropical or suspicious, to be morally convinced of a prisoner's guilt, when that prisoner is perfectly innocent. To this credulity counsel conversant with criminal courts are peculiarly liable, for their experience is fraught with many an illustration of Scriptural truth, that our nature is desperately wicked. However sure their private information may be supposed to be, they should still insist, if professionally retained, for full proof on oath. The evidence is not complete if any argument—any suggestion—any hypothetical case raises a doubt in the minds of the jury that some one else is guilty—that the prisoner is not. The evidence is incomplete if any argument on the mode in which it was delivered, or the way it was obtained, or on the matter which it contains, can render its credibility justly suspected. It may happen that, through eagerness to repel suspicion, or fear of being considered lukewarm, a witness colours, exaggerates, or invents. Waiving all private confidential communications, the counsel may expose false testimony, and display all his acumen in detecting the wish to deceive, whether that ingenuity be exerted against a guilty, or an innocent client.

There are few popular fallacies more dangerous, no vulgar errors more inhuman, than the prejudice which prevails when some offender is committed on an odious charge, against those whose professional duty it is, if retained, to defend him. "He has murdered a kind master in his sleep, and yet counsel are going to plead for him," is the unthinking cry. With this horrible crime the prisoner is charged indeed, but not convicted of it; and the more grievous the accusation, the more harrowing the evidence in its support, the more general the cry of execration, the more undoubted is the necessity, that, if the supposed assassin is to be fairly tried, and fairly convicted, he should be well and vigorously defended. Jurors must be protected against their own honest prejudices, the public fervour that condemns, without a hearing, on *ex-parte*

statements, must be reduced from fever heat to the calm and even temperature of a court of justice; evidence must be sifted, weighed, discriminated; the voice of argument, persuasion, entreaty, heard, or the supposed miscreant becomes a victim and not a sacrifice, a martyr to popular vengeance, not a convict by the law. The popular ear is credulous; the sensibility of the people at atrocious charges soon awakened; and were the accusation to be followed by instant sentence and punishment, were a rapid and silent execution to stifle unconvicted guilt, we should withdraw from the broad sunshine in which our legal institutions stand invitingly open and exposed to the darkness of Eastern tyranny and the bye-paths of irresponsible vengeance; we should nourish the germ of that principle which developes itself at Constantinople and Ispahan in swift accusation and instant punishment, in treacherous denouncements and rash credulity, in strangling by mutes, in the stealthily-laden sack and silent river. Though his crime be of scarlet dye, deeper than that of Cain, the accused criminal must be heard according to our just and humane laws before he is condemned; and, unequal to the task of speaking for himself, must be suffered to attempt to disprove the charge, or defeat his accuser, by counsel.

An ignorant relative of some forlorn prisoner may accompany the attorney to counsel's chambers, and say, "We know he is guilty, we only wish you to quibble for him;" meaning, according to the real etymology of the word, *quidlibet*, to say every thing that can be said in his behalf. Laymen and clerics, who ought to be better informed, express their utter amazement that members of a liberal profession should condescend to act on the spirit of such instructions — to take any objection to the indictment to which it may be liable — to exclude the evidence of a hostile witness — to endeavour to break it down by cross-examination. And yet he would betray the first principle of advocacy were the barrister to decline availing himself of all technical or strictly legal objections. He is bound to urge all that his unfortunate — it may be guilty — client would have been anxious, had he possessed the competent ability, to urge for himself; to mould into more presentable shape the crude efforts at exculpation of the man who stands at the bar for his deliverance; to

embody his thoughts in fitting language—to invest his case with all the arts of rhetoric—to persuade, convince, by the force of argument compel, the jury to acquit. There is the well-understood restriction by which every gentleman feels himself bound, the line of demarcation within which he must necessarily walk, to refrain from introducing his own individual belief, and from stating facts of which there is no evidence. It is no part of his duty—quite the reverse—to misstate the evidence, but to dwell strongly on those portions which tell most for the prisoner, to explain away adverse facts by any ingenious hypothesis which a reasonable man may make, and to which reasonable men may listen. It is an offensive fallacy to argue that, if he does not state, he acts a lie. The patron, in right of his office, should call attention to the most favourable parts of his client's case, in the most earnest manner he can; should dress his remarks in the most attractive guise, and conciliate, with smooth and facile art, the suffrages of those who are to decide. He may be as impassioned as the cunning player in Hamlet. Why should he not? The warmth may not be affected, for passionate pleading is at least as likely to kindle the disputant as when contending in private argument for victory.

This unfounded reproach of enacting falsehood was adduced against the profession by a celebrated orator on a memorable occasion.

Mr. Austin, in opening the case of the petitioners against the return of Mr. Fector for Maidstone, before a committee of the House of Commons, was reported to have stated, according to his instructions, that Mr. D'Israeli, at the general election, had entered into engagements with the electors, and made pecuniary promises to them which he had left unfulfilled. Mr. D'Israeli wrote a letter to the newspapers, completely refuting the charge; but, not content with his disproof, added strong personal imputations on the counsel, and sarcasms on a profession "the first principle of whose practice appears to be, that they may say any thing, provided they be paid for it. The privilege of circulating falsehoods with impunity is delicately described as doing your duty towards your client, which appears to be a very different

process to doing your duty towards your neighbour. This may be the usage of Mr. Austin's profession, and it may be the custom of society to submit to its practice; but for my part, it appears to me to be nothing better than a disgusting and intolerable tyranny, and I for one shall not bow to it in silence."

A criminal information was filed, judgment suffered by default, and the eloquent declaimer stood on the floor of the Court to receive sentence.

"If," said the Attorney-General, Sir J. Campbell, commenting on this bitter invective against the profession of the law, "a gentleman at the bar did not boldly and resolutely state the material and relevant facts, according to the instructions he has received, he would not be doing his duty to his neighbour; he would not be doing his duty to his client; he would not be doing his duty to himself. Without this practice, justice could not be administered, and innocence could not be vindicated; the law would be a dead letter."

Mr. D'Israeli made a rhetorical apology for his rash and ill-advised impromptu. "The report contained allegations of no common severity—an accusation of public corruption and private dishonesty. I am not desirous of vindicating the expressions used in that letter in reference to the profession, but I believe that there is, in the principle on which the practice of the bar is based, a taint of arrogance, I will not say audacity, but of that reckless spirit which is the necessary consequence of the possession and the exercise of irresponsible power. The question is one indeed of great delicacy and great difficulty. I have imbibed an opinion that it is the duty of a counsel to his client to assist him by all possible means, just or unjust, and even to commit, if necessary, a crime for his assistance or extrication. This may be an outrageous opinion, but it is not my own."

Mr. D'Israeli then read the famed passage in Mr. Brougham's defence of Queen Caroline, and said, "According to this high authority, it is the duty of a counsel for his client even to commit treason."

This is, however, a most strained and forced misconception of the meaning of that very celebrated paragraph. He was speaking in defence of a queen whose supposed wrongs had created much excitement in the nation, and symptoms of

civil tumult. He had hinted that it might be his unexampled lot to state a case of recrimination against her illustrious husband, the effect of which might lash the people into fury. His lips would not be closed should he feel it necessary to exercise that right.

His celebrated commentary on the duties of an advocate to his client may be divided into two parts,—the first strictly accurate and true; the second somewhat rhetorical and exaggerated, but appropriate to the occasion. It is most true that an advocate, by the sacred duty of his connection with his client, "knows in the discharge of that office but one person in the world—that client, and none other. To save that client by all expedient means, to protect that client at all hazard and cost to all others, and among others to himself, is the highest and most unquestioned of his duties." So far, on the part of all counsel, there must be one chorus of assent. The rest of the celebrated passage is coloured by the time and place, and derives a natural tone of exaggeration from the political magnitude of the case entrusted to him, the defence of that queen whose triumph might usher in rebellion! "He must not regard the alarm, the suffering, the torment, the destruction which he may bring on any others; nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate should unhappily be to involve his country in confusion for his client's protection." Due allowance being made for these words with reference to the time and season, the bright hues of rhetoric being toned down to the plain prose of fact, they form merely a vivid declaration that the advocate would, irrespective of consequences, discharge his duty to his client, the royal consort. That duty once undertaken, is of so sacred a character and so paramount to all other considerations of personal feeling and interest; the end and aim of his retainer is so clear and decided, to look only to the verdict, if counsel for the accused, to regard nothing but his acquittal, this the goal upon which he must fix his gaze *irretortis oculis*, that, when explained in relation to the subject, there is nothing in the eloquent asseveration

of Mr. Brougham, which should shock the most conscientious advocate. A grave responsibility accompanied the performance of that professional duty, but it was one that the most loyal subject might discharge. No treason was either spoken or contemplated as a remote possibility; and the voice of the profession, without hesitation, assents to the truth of his unqualified proposition, that the advocate must freely perform his office, and fear no consequences in the discharge of his duty to a client. An objector will ask, Must he take any case, without reference to the moral right or wrong of the party for whom retained? He may answer, Yes, if not clearly based in falsehood or fraud; for he must rely on his instructions, and when is the case so represented to him?

An acute metaphysical writer* has ably contended that "the ordinary practice of the profession, involving, as it is supposed to do, the indiscriminate defence of right and wrong, and the most complete practical indifference to the guilt or innocence of a client, or the truth or falsehood of a case,— does not in reality exercise any bad mental or moral influence on the community. The privilege of circulating false impressions with impunity, forms no real objection. If parties were allowed to speak for themselves, they would use very little ceremony towards each other or their witnesses. The advocate cannot be as impartial as the judge, and as indifferent as the by-stander. It is by the clashing of opposite or conflicting statements, the doubts thrown on character, the uncompromising inquiry into motives, the rough expression of disbelief, that truth is ultimately struck out. It is obviously the barrister's duty to take a technical objection if required, or it would be necessary in each individual case to go back to the first principles of legislation."

These remarks may be expressed somewhat too roundly, but they involve a principle on which the criminal lawyer is compelled to act. He is a mere finder of arguments on one side of a given question.† Were a barrister held responsible for the truth of his instructions, he must merge his exclusive character in that of the attorney.

It is a calumny to allege, as respects even civil cases, that

* Law Magazine, vol. x.
† Stammers' Essay on the case of R. v. D'Israeli.

a barrister is required to undertake a cause which he knows to be unjust. He looks to, and can look no further than to, his instructions. When is the case of plaintiff or defendant described as iniquitous? He ought to undertake the defence of any accused person that may apply to him, even when such person is notoriously guilty; for forms and rules must be observed. Legal guilt consists in the breach of some established law, within which the alleged offender should be brought; and it is necessary that the facts should be clearly proved, to enable the judge to award the exact and fitting punishment. "It would hardly do," Mr. Stammers argues, "to hang a man on a surmise, a mere opinion, or unsworn statement."

Better than this surely is the hazard to which juries are now exposed, of yielding to a false hypothesis or an ingenious sophistry.

Even at the risk of being compared to the unjust judge, who asked, What is truth?—an apologist for the privileges of the Bar may inquire, What is sophistry? Any argument, we should define it to be, which the disputant uses, without being convinced of its soundness. But ought he to constitute himself the judge? We have known the Bench convinced by arguments which the counsel himself thought fallacious. He is appointed to advocate a cause. He is bound to lay the case before the jury in the manner which he himself, in the full exercise of his discretion, deems most advantageous for the client. The rule of advocating one side is too long established, and too firmly sanctioned by society, to be shaken; an inveterate custom has established that there is nothing wrong, or degrading, or demoralising in the practice; but, on the contrary, that it is fraught with honour, and leads to distinction.

Each advocate is to present his case as strongly as the law or the facts will permit. With the ultimate decision of the cause he has nothing to do. Suppose the wrong indubitable, is there any breach of propriety in addressing the jury in mitigation of damages, in softening asperities of statement, and, if necessary, calling witnesses to modify the case. Why should not technical defects be taken advantage of? The prosecutor has failed to comply with some of those conditions on

the performing of which alone he, as a member of society, has a right to the assistance of the law. "The law," says Mr. Gisborne, "offers its protection only on certain preliminary conditions: it refuses to take cognisance of injury, or to enforce redress, unless the one be proved in the specific form which it prescribes; and, consequently, whatever be the pleader's opinion of his cause, he is guilty of no breach of truth and justice in defeating the pretensions of the persons whom he opposes, by evincing that they have not made good the terms on which alone they could suppose themselves entitled to success." *

As to cross-examination, the right is equally clear. What kind of person says this? Is he destitute of that moral sense requisite to give weight to his testimony? There would be guilty silence in not testing his credit.

The effect of the present system upon the parties pursuing it can scarcely be gainsayed; neither has the profession generally, nor have individual members, lost caste by a fearless, impassioned, successful exposition of their client's case, however worthless morally that may have been. The counsel is no less accredited in private than the diplomatist "sent out to lie for the good of his country," as trustworthy as the philosophical Johnson, or erudite Parr, who combined an inveterate habit of arguing for victory with a scrupulous regard for truth.

They mistake the objects as much as the rights and duties of advocacy, who contend that the pleading is mischievous, because unilateral. The pleader looks on the silver side of the shield alone; it is the nature of his part to present only the favourable aspect; he is to show in profile the best features of his client; he is to hold that mirror up to the jury which presents a flattering, and not a faithful, likeness. We define the duty by describing it. With such an example as Dr. Johnson, who can be afraid of the habit destroying the love of truth? The effect of the system upon the relatives and friends of the prisoner is equally satisfactory. Assured of every thing having been said that could be said; of all having been done in his behalf that zeal, and learning, and ability could accomplish; satisfied that their fellow-kinsman has met with a fair trial, that his case has been fully considered, and

* Gisborne's Moral Essays.

that justice had been done; there is grief at his fate, but no repining,—no secret heart-burning, no latent sense of wrong. The public are content with justice thus administered, and, of all our institutions, there are none, the surface of which has been so little ruffled by the passion for change, as that of Trial by Jury.

How different would be the popular feeling,—how sad the changed result, were the prisoner accused of atrocious crime to be cast as a victim, bound and tongue-tied, into the furnace of popular vengeance; were he to be condemned unheard, or left forlorn to his own untutored efforts, telling rather against than for him; were counsel to be deterred by ignorant clamour from the full, free, and fearless performance of their office, which sacred office is to rescue the menaced prisoner by all legitimate modes of reasoning, to aim at saving his life by all honourable arts of persuasion. "I feel," said Curran, at a period of his country's history when anathemas were pronounced from high quarters at counsel thus ministering to their client's exigency,—"I feel that the night of unenlightened wretchedness is fast approaching, when a man shall be judged before he is tried, when the advocate shall be libelled for performing his duty to his client—that right of human nature—when the victim shall be hunted down, not because he is criminal, but because he is obnoxious."

So fully is this absorption of private feelings in the duties of the advocate understood and acted on, that the Chartist committed his defence to the Tory, the Roman Catholic to the Protestant lawyer; and so impressive was their zeal, that the uninitiated might well imagine that Sir F. Pollock and Mr. Kelly shared in the delusions of Frost, and that the eloquent Protestant, Mr. Whiteside, had adopted the polemical reveries of O'Connell.

It will not be contended by those who know and value the privileges of the profession, that Mr. Whiteside and Mr. Henn ought to have refused to act for O'Connell against the government. The bar do well to refrain from coming forward in their individual capacity, or using a form of words calculated to induce a belief that they are speaking in their private character. Nothing would seem better

calculated to bring advocacy into disrepute and lessen its wholesome influence, than the irregular practice of bringing the speaker's own real or pretended conviction into play.

There is a wide step between the advocate and witness. The counsel may, in the eagerness of speech, vouch his own conviction and express his own personal belief; but in thus volunteering testimony he steps beyond the boundary line of professional duty. An acute but severe judge once remarked to a jury on this inadvertence: "The counsel has said, 'I think this,' and 'I believe that.' A counsel has no right to say what he thinks, or what he believes; but since he has told you, Gentlemen, his belief, I will tell you mine, that, were you to believe him and acquit his client, he would be the very first man in this court to laugh at you!"

Even as affects the practice of the law, the result of the present system is in the main beneficial. The individual may escape, and the ignorant public will wonder that a criminal like Sheen, who has imbrued his hands in the blood of his child, should walk unpunished from the dock because the name of the infant was misdescribed in the indictment. But it may be necessary for the security of innocence that the name of the party killed should be properly described. The law requires an extreme nicety of description, and if the prosecutor fail to comply with the requisite precision of the law, he may blame his own want of legal accuracy for the default; he has failed in performing the condition on which alone he is entitled to a conviction. The general precision of criminal proceedings is secured by these chance waifs from justice: the blot once hit, more care is induced in future, and if there be an over-refinement, this defect should be cured by the legislature.

Another topic of general interest, which the case of Courvoisier forced on the attention of the public and the House of Commons, was the necessity for and propriety of the public execution of criminals. The reprehensible publicity given to all the sayings and doings of the unhappy convict and those around him, the curious character of some of these proceedings, and, climax of all, the disgraceful scenes at the scaffold, drew marked attention to the subject

of public executions generally, and the expediency of introducing some private method of exacting from the wilful shedder of blood the last dread penalty.

As soon as Parliament met, Mr. Rich asked leave to bring in a bill for the better ordering of the execution of criminals, and prefaced his motion with a valuable speech enforcing the reasons of his anxiety to do away with a barbarous and pernicious practice, and to provide a formal, reverent, and sufficiently public and authentic method of conducting the execution of criminals. He justly remarked that they should not be exhibited as spectacles, and instanced the closing scene of Courvoisier as an affront to a Christian and civilised community. "On the Sunday the avenues to the prison chapel were blocked up before nine by those who had obtained the privilege of admission to hear the condemned sermon and see the criminal, — several lords, members of parliament, and a few ladies. On the day of execution many persons of distinction were admitted to the prison before seven o'clock: foreign princes and counts, who wished to see the English mode of disposing of great offenders; and a great actor, for the advantage of his professional studies! Amid the throng of amateurs the prisoner received the Holy Sacrament! As he was going to be pinioned, Mr. Sheriff Evans drew a letter from his pocket and asked for his autograph, and Mr. Sheriff Wheelton wept bitterly!" The people received the criminal, as he stepped on the scaffold, with an unanimous shout of execration, a savage yell, which could be scarcely wondered at, however cruel, for nature's voice spoke aloud its natural detestation of the perfidious servant, who for the sake of plunder murdered an aged master in his sleep.

Mr. Rich proposed by his plan, that all public officers who were responsible for the official execution of criminals without the walls should be equally responsible for their execution within the walls; that the relations and a certain number of friends of the prisoner should be present if they requested it; that a certain number of the public press should be admitted. He required the presence of all the convicted prisoners within the gaol at the time of execution,

and that they should pass the remainder of the day in their own separate cells; trusting that, if the sight of the final catastrophe of crime can at any time soften and reform them, it will be most likely to do so when, instead of returning to the loose conversation of their ward, they shall be left to their own solitary reflections. He proposed to admit a limited number of magistrates, and that a formal certificate of the execution, with the number and names of the witnesses present, should be inserted in the three following gazettes.

He suggested a formal procession from the court-house or town-hall to the gaol, and the tolling of the bells. "The execution would be formal and solemn; for it would be attended by the public authorities and the minister of religion, unexposed to the interruptions and crowdings of curiosity. It would be satisfactory and public; for all the classes or individuals in any way connected with it, either by affection, duty, association, or responsibility to the public, and each one independent of the other, would be there to witness it; with the press and official certificate to authenticate and publish it. And, finally, it would be decorous; for it would be conducted without parade and without excitement, in the presence of an assemblage of persons all under the check, and within the observation, of each other. It would prevent the last agonies of a dying man from being made a raree-show for his fellow-creatures to stare at."

Notwithstanding this specious argument, and the shallow objection of Mr. Ewart to the measure, that it took away one of the greatest arguments in favour of the abolition of capital punishments, Mr. Rich was obliged, so strong was the feeling of the House, to withdraw his motion.

However fenced and guarded by the humane and able suggestions of the honourable member, they were mere palliatives for the privation of that publicity which is the principle of our criminal institutions. The last penalty exacted by society for its own preservation from the secret murderer must not, in its privacy, partake of the nature of his crime, or there would be room for suspecting (and who so suspicious and credulous as the depraved and ignorant?) similar practices of cruelty to the Inquisition and Bastile;

there would be ground for mistrusting the fact of execution. A notion lingers to this day among the vulgar that Fauntleroy was not executed; and how would such fancies be multiplied, were the last agonies of the condemned in secret! However shocking to humanity to witness assembled before "that accursed tree, the gallows" a hard, and jeering, and callous multitude—however revolting the aspect of all that is most vicious and debased in society compressed together—the last dread act, by which man, in self-defence, takes life from fellow-man, as a national punishment, for the necessity of executing which the nation grieves but is not ashamed, must be, like his trial and doom, free of access to all, public and open, in the face of the people, and before the sun.

Mr. Adolphus opened the facts at great length, in a speech of considerable ability, dilated on the circumstances from which guilt must be inferred, and anticipated the probable topics that would be urged in defence.

"If he had not read a word during the last five weeks of this extraordinary transaction, the state of the court, crowded by illustrious and noble persons, would make him understand that a trial of the utmost public importance and interest was about to be entered on.... Strange that a family so distinguished by rank, renown, and riches as that of Russell, should in the course of two generations have lost two members in a manner the most awful. The Marquis of Tavistock, father of Lord William Russell, and Francis Duke of Bedford, successor to a duke immortalised by the eulogy of Fox, had died suddenly. The unfortunate nobleman whose death he had now to inquire into had gone to bed in his usual health and spirits, and was found the next morning a lifeless corpse, with his head nearly severed from his body. He was seventy-three years of age, and laboured to a certain degree under the infirmities incident to such an age; though he could enjoy life well enough, his condition was feeble, he walked ill, and was defective in his hearing. He lived alone, at No. 14. Norfolk Street, Park Lane, a house of small size, but suited to one of his habits. His family consisted of a valet and of two female servants, a housemaid and cook. He

also employed a coachman and groom, but they did not live in the house, and could have no cognisance of the transaction then to be inquired into. But they were in attendance, as well as every witness that, in his judgment, could throw the slightest light on the case, and, with rule or without rule, according to practice or against practice, if his learned friend the counsel for the prisoner desired it, he would call them all, and make them his witnesses. Every thing should be done that could facilitate the ends of justice."

The salient parts of the evidence, which the practised mind of this acute criminal lawyer particularly noticed and enlarged upon as tending to cast the greatest suspicion on the prisoner, were the state of the premises and the conduct of Courvoisier. There may be detected in his shrewd comments a trick or fault of magnifying trifles, and exaggerating circumstances beyond their due weight and importance.

"The access to the house it was material to notice. The street door opened into a good open street; the back part was surrounded by stables and various premises, so that it was scarcely possible to approach in that direction without much difficulty. Supposing it possible for any person to have passed over the premises belonging to the other houses, there must have been a dislocation of tiles and slates, which here there was not."

A number of small silver articles being left in the passage, or found on the table, Mr. Adolphus remarked, "It was most extraordinary that all these valuable articles should be left behind; and this circumstance formed, in his mind, a proof that the burglary was not real, but simulated. Then the man's conduct, when asked to go into his master's bed-room, was very strange. He first went to the window and opened the shutters, and did not proceed to his lordship. The girl more naturally went to the bed-side, and saw that a murder had been committed. He called on the jury to consider the conduct of the valet, and compare it with what would be the natural and proper conduct of a person under such circumstances, if unconscious of crime. Would he who attended an aged man, if innocent, have gone to the window to open the shutters, trusting to the clamour of a female servant to

waken her master? Would he not have gone quietly to his bed-side and attempted to allay his alarm, rather than have permitted him to be agitated by a sudden discovery?"

To these hypercritical and too refined questions a sensible jury might reply, "We cannot tell: it must depend on the intelligence, state of mind, and state of feeling, of the party." There would be little safety for life were a conclusion of guilt arrived at from such minute and trifling particulars.

"When the girl cried out, 'My Lord, my Lord,' he observed, 'There he is,' as if there was any doubt that he was in bed. Such was the conduct the prisoner exhibited. The female servants knocked and rung at the neighbours' houses for assistance,—presently the police and surgeons arrived. All this time the prisoner did not give himself the least trouble, or make the least exertion. When questioned, he returned no answer: when any thing was done, he took no share in it."

This representation was not strictly warranted by the facts, and the most innocent might have acted and spoken still more irrationally under the influence of confusion and terror.

The suspicion that Lord William Russell had committed suicide was most successfully refuted, almost too successfully; for the facts negatived the notion so completely, that it seemed almost puerile to dwell upon it.

"The surgeons found that a deep gash had been made across his lordship's throat, sufficient to extinguish life; and, of course, an idea naturally suggested itself to the mind that suicide might have occasioned his death. However, if there had been nothing in his character and temper of mind to render such a suspicion improbable, it was clear that suicide was impossible, inasmuch as no instrument was found at, or near, the spot by which suicide could have been committed; and, even if there had, the surgeons would prove that the wound was one which his lordship could not have inflicted himself. Besides, his face and hands were covered, and this, of course, could not have been done by himself after death."

The jury must have been infidels indeed had they not been convinced by these facts.

The counsel proved with equal clearness, almost as conclusively, that the house had not been entered from without

by any burglar. "The exterior at the back of the house was examined without loss of time. On one side the wall was impassable, and even supposing that it was passed, the party breaking into the house would have had to cross a tiled balcony, part of which must have been removed by any considerable weight like that of a human body. It would be proved that the building had received no injury whatever. The other side was more accessible, but the wall there was whited, and a great deal of dust had settled on it, which must have been disturbed by any person treading on it. Even a cat's foot would have left a mark. The weather had been fair for some time, and there was no mark either of man or beast on the dust. If any man had slipped down the wall, the whiting would have been discoloured or displaced; but it was, on the contrary, perfect, and it appeared that nobody had broken into the house by that way, and that the marks of burglary were simulated. . . . . He would produce not only the policeman who examined the door, but scientific persons also, who had inspected it with a magnifying glass, and who would depose that the door was not broken from the outside, but from the inside. That was a damning fact, because it would then appear that some individual in the house had broken the door for the purpose of simulating a burglarious entry, and it was for the jury to say whether that individual could be any other than Courvoisier."

The violent presumptions of guilt arising from the state of the furniture in the bed-room and the subsequent discovery of the missing articles were then enlarged upon with much force. "The rushlight, it was found by experiment, must have burnt half an hour. Lord William Russell had been reading the life of Sir Samuel Romilly, who died by his own hand. This book was found by the bed-side, together with his spectacles. The book had not been placed there by his lordship, because it was not his habit to read in bed; and, even if it had been his custom, the wax candle was found so far removed that his lordship, for all purposes of reading, might just as well have left it in the cellar. The wax candle was burnt down to the socket. What, then, was the inference? That the rushlight had been put out just before or after the

completion of the murder, and that the wax candle was lighted to enable the prisoner to go over the house, and placed in such a position as to favour the opinion that his lordship had been reading in bed. This was one of those circumstances by which over-cunning deceived itself, and which betrayed those who only sought to deceive others.

" The police searched the prisoner's box in his bed-room, but found nothing in it material to this inquiry. He saw that this observation made some impression on the jury, and he would only observe that if the prisoner was guilty and possessed even moderate cunning, he would hardly put any of the stolen articles into his box, which he must have been sure would be subjected to investigation. This box was searched, and he did not rely on any thing found in his box on any occasion. He felt that he was speaking to men who heard and read what was published to the world. Something might have transpired with respect to linen marked in a particular way, but he attributed no weight to it. . . .

" The skirting in the pantry was examined on the 8th of May, the prisoner not being yet in custody, and behind the skirting the officer found five gold rings, which were most undoubtedly the property of the deceased nobleman, and which had been seen in his possession up to the time of his death. The prisoner said at once, when shown to him, that they had belonged to Lord William Russell. His learned friends who defended the prisoner might take advantage of that frank assertion, and of such an advantage it was far from his wish to deprive them. Beneath another part of the skirting five gold coins were found, his lordship's Waterloo medal, and a ten-pound note which had been given to him for a charitable purpose, and which no hand but the prisoner's could have secreted there. Had a common thief broken into the house he would of course have taken this note away with him; but it was found behind the skirting-board, in a place to which the prisoner had peculiar access. From the moment when the murder was discovered the house had been in the possession of the police, and it was impossible that any person could have got in and secreted the articles in the way he had mentioned. The consequence was, that they had been

secreted by none but the prisoner, who, during the whole night, aided by the wax candle, had been roaming about, seeking how he could dispose of the stolen treasure. A further search was made, and on the 9th of May a locket was found behind the water-pipe. This locket was endeared to his lordship from memories of past affection, and always kept about his person, for it contained the hair of his deceased lady. He had, shortly before his death, been at Richmond attended by the prisoner, and missed the locket there. Notwithstanding an anxious search, and many inquiries, he never recovered that locket, which was found secreted near the hearth-stone in the prisoner's pantry. This showed most decidedly that the prisoner was in possession of it before the murder, and that he had concealed it no man could doubt. He was taken into custody on that day, Saturday, May 9th, and on the following Wednesday an officer, on turning down the lead which covered the sink in the pantry, found the watch which had been placed by Lord William Russell by his bed-side on the night of the murder."

The clever mode in which Mr. Adolphus anticipated and sought to remove the principal topics for the defence deserves particular attention.

"They might be told that there was an absence of all motive on the part of the prisoner to commit this crime. The absence of apparent motive was a very erroneous test by which to judge of a man's innocence. They were not able to know the motives and impulses which led men to commit crimes; and some offences of the greatest importance to society occurred, though no definite or real motive could be discovered. A recent event had occurred (the shooting at the Queen by Oxford) which had filled the public mind with astonishment and horror, and which might have occasioned confusion and desolation throughout the land; yet neither man, nor prophet, nor angel, could tell the motive which indicated it; still it had been done. Yet here there was not such a complete absence of motive as might appear at the first view. The prisoner was a foreigner; he had no connections to attach him to this country; he had left the service of a wealthy individual to take that of the noble lord, and he

was heard to have lamented the change, for he said he had given a sovereign and got seventeen shillings for it. On another occasion he observed, 'If I had one third of old Billy's property, I should not be long in this country.' In saying this the prisoner expressed what foreigners frequently believe, that English noblemen went about with a mass of gold; and this impression the rouleau cases, capable of holding two hundred sovereigns, were calculated to confirm. Englishmen were not in the habit of considering murder as a prelude to robbery. With foreigners it was different; for they imagined that if they destroyed the life of the person they robbed, there would then exist no direct testimony against them. It therefore was a natural supposition, that the murder was committed by the prisoner in the expectation that a considerable plunder would fall into his hands, which would enable him to quit this country."

Of this ingenious but unfair hypothesis, not unsatisfactory to the feelings of a truly British jury (the prisoner had waived his right to a jury composed half of foreigners), Mr. Phillips had just reason to complain.

A more fair and appropriate topic was the defence by Mr. Adolphus of the female servants against his friend's anticipated attack. "It was not in his power, not permitted by law, to call witnesses to support the character of Sarah Mancer, the housemaid. But, in answer to the general declamation which might be addressed to them, he would say this, that her character was unblemished in every particular. If it were suggested that she was unworthy of credit, he hoped the jury would not consider her testimony prejudiced by any mere declamation, or the use of hard terms and bad names. He challenged, he dared, he defied, his learned friend to impeach her testimony on the ground of character. A similar attack might, perhaps, be made on the police. He knew that the manner in which they did their duty, and every thing depending on them, were made the subject of the most rigorous investigation. It might be said, their exertions had been stimulated by a very large reward. But that four hundred pounds, which was to be divided among a large number of persons, should induce them to enter into a con-

spiracy to take away the character and life of an unoffending man whom they never saw, was not more likely than that two females, who during three years never had a blemish on their characters, should, by false testimony, endeavour to convict a fellow-servant with whom they had never quarrelled. If, in conclusion," said Mr. Adolphus, "he had seemed to exceed the bounds of moderation in any thing he had said, they must attribute it to the warmth of his mind, not to the zeal and earnestness of an advocate, but of an anxious inquirer after truth. The illustrious family for whom he appeared had no desire to hunt a helpless foreigner into the jaws of death, as if actuated by feelings of personal revenge. He would guard the jury against appeals to their merciful consideration. Mercy was the mitigation of justice, not the privation of it. The weight of testimony must have its due effect on their minds. He could feel, as every other man must, for the case of a foreigner, distant from his own country, and charged, under the most solemn circumstances, with the commission of a capital crime. But there was a paramount consideration, the safety of the vast family of the British community; for on their unbiassed verdict in such a case must depend whether the old man retiring to rest, and the defenceless female, and the helpless child, having addressed their prayers to Almighty God, should be subjected with impunity to the assassin's knife. The case required firm and upright hearts, cool and intelligent heads. He believed the jury had both, and he fervently prayed that God would so fortify their hearts, and enlighten their minds, that they might come to a right conclusion."

At the close of this ingenious and powerful address, Mr. Phillips suggested to the Court that it might be well for their lordships to have the depositions both before the magistrate and the coroner to refer to.

Mr. Adolphus said, if the depositions before the coroner and magistrate became at any time necessary for the defence of the prisoner, either in examination, cross-examination, or in addressing the jury, whatever objection he might offer to their production on other occasions, he should urge none in a case like the present.

Baron Parke remarked, upon this declaration, with just severity, that he saw no reason why this case should be conducted on principles different from any other. Every case must proceed according to the established rules of law, and no counsel was entitled to take credit for any relaxation.

Mr. Phillips observed, by way of apology for himself, "All I ask for the unfortunate prisoner is that justice which the law entitles him to. I merely suggested that the depositions taken before the coroner should be before the court."

Sarah Mancer was then called, and gave the following clear evidence in a tone of firm yet artless simplicity, which vouched strongly for its truth. Immaterial passages are omitted. "I was in the employment of the late Lord William Russell as housemaid for three years. On Tuesday morning, the 5th of May, after his lordship had gone out, the prisoner said Lord Russell had given him five messages to attend to, and he was fearful he should forget some of them; he said one of them was to send the carriage to fetch his lordship from Brooks's at five o'clock. After dinner the prisoner went out on the messages he had been entrusted with; he returned a little before five o'clock, alone. He told me he should go and get his lordship's things out to dress. An upholsterer's man went up-stairs to tighten the bell handle, and Carr, an acquaintance of the prisoner's, called. While we were at tea, the coachman came in by the area steps. On his coming down something was said about the carriage not having been sent for his lordship. The prisoner said he had forgotten to order it, and he should tell his lordship that he had ordered it at half-past five o'clock. I told him he had better tell his lordship the truth, and he would forgive him. He said 'No! he should tell his lordship half-past five o'clock; he was very forgetful, and must pay for his forgetfulness.' The coachman upon that left the house. After tea was over the prisoner went into his own pantry. Lord Russell soon after returned in a hackney cab. About twenty minutes to six o'clock I went to the pantry door, and said, 'Courvoisier, his lordship has been obliged to come home in a cab.' He then went up and let his lordship in. He went into the dining-room, which is on the ground floor, immediately over the

kitchen. He soon after rang the bell: the prisoner went up, and afterwards came down with a letter in his hand; he told me he was going to take it to the stable by Lord Russell's direction. He then went out, and Carr with him. He told me in the pantry that his lordship seemed angry when he first came in, but he got quite good tempered after. The prisoner brought in a dog of his lordship's when he came from the stable. Lord Russell then went out with his dog for a walk, as it was his custom to do every day. He returned about half-past six o'clock. The prisoner was soon after employed in making arrangements for dinner; seven o'clock was the dinner hour. Lord Russell dined at home alone in the dining-room on the ground floor. He was waited upon by the prisoner. He afterwards went up into the back drawing-room. He used to go up there to write. I left him there when I went to bed. He did not come down again to my knowledge. The coachman came in a little before nine o'clock to fetch the dog. I saw nothing more of the coachman that evening. The prisoner and I supped together that evening, a little before nine o'clock. The cook had gone out. During supper, the prisoner and I had some conversation about change of servants. He said he wished he had not come into his present service, as he did not like it so well as he thought he should. On the 22nd of April, the day Lord Russell came to London, the prisoner said he had been very cross and peevish, as they had changed his room three times while he was stopping at the Castle at Richmond. He said that his lordship had lost a locket while at Richmond. He did not know how it was lost. He could not find it. He said he did not know how the late valet could have stopped so long with his lordship; he did not think his temper would allow him to stop so long. Some time after, he said he must write to the porter at Richmond about the locket. The area gate was generally kept unlocked in the day. It was either the prisoner's or the cook's duty to fasten it. The key used to hang on a nail in the kitchen. I left the kitchen a few minutes after ten o'clock to go to bed. I slept in the front room, third floor, immediately over the room in which Lord Russell slept. The cook slept in the same

room. We slept in two separate beds. I should have to pass the cook's bed in going to, or returning from, mine. It was my duty before I went to bed to light a fire in Lord Russell's bed-room. I did so that night. After lighting it I went up to my own bed-room: the prisoner slept in the back room, third floor, next to ours. Every thing appeared to me in the usual state in Lord Russell's room, when I lighted the fire — the same as on other nights. The room immediately joining Lord Russell's bed-room was not used: it is a sort of lumber-room. The door which opened from the landing had a spring on it, which caused it to close of itself. The opening and closing of that door made no noise, without it was shut hard. The door at the foot of the stairs, leading up to our room, shut easily. The door of Lord Russell's bed-room was covered with baize; the door at the foot of the stairs had a common latch, and had no covering: that door was sometimes closed at night, and sometimes left open. The cook came up-stairs about a quarter of an hour or twenty minutes after me. I was in bed when she came up: she went to bed."

Did you or the cook, to your knowledge, leave that bed-room any more that night? —"No, I heard no noise, nor was I disturbed by anything in the course of the night. It would be the prisoner's duty to remain up below till his lordship went to bed; at the time I went to bed Lord Russell was in the back drawing-room. I saw a light in the back drawing-room as I went up-stairs, and a little before that I heard the back drawing-room bell ring. I awoke about half-past six o'clock next morning; the cook was then in bed asleep. Half-past six o'clock was about the time I usually got up. As I was going down stairs from my own room I knocked at the prisoner's bed-room door. I was accustomed to do that. I did not hear any answer given to my knock. I noticed the warming-pan on the landing adjoining Lord Russell's room; it was lying on the landing with the handle nearest to the bed-room door. I left it there on this occasion, and went into the back room adjoining his lordship's bed-room. I was not in there a moment. I went in there for my broom. I then went down stairs into the back drawing-room, where I had left his lordship the night before. I noticed his writing-

desk turned round: it is what is called a Davenport desk with a sloping top which lifts up: four drawers were open, and the top jammed up with papers. I observed his bunch of keys and several of his papers lying on the hearth-rug. I noticed a screw-driver lying on his writing chair. I had seen that in the butler's pantry a few days before. I then went down stairs and saw a number of things lying against the door; his lordship's large blue cloak, opera glass, a little trinket-box lying on the top, and a number of things tied up in a napkin, and a number of small silver articles. I set the dining-room door open, and saw a number of things lying on the floor. The shutters were closed, and I set the door open to give me light, as I felt alarmed seeing those things; and then I went and opened the shutters. After I had opened the shutters I saw the silver candlesticks on the floor: all the drawers and cupboard doors were open. I felt dreadfully alarmed, and ran up-stairs to tell the cook. I found her in bed. I said something to her; she made me an answer; in consequence of what she said I went to the door of the prisoner's room. I said, 'Courvoisier, do you know of any thing being the matter last night?' He said, 'No.' His room door was shut: it was opened instantly by him. It was ten minutes since I had knocked. When he opened the door, he was dressed all but his coat. He used to wash in the pantry below. He was dressed in the usual way that morning, except his coat. On his opening the door I said, 'Do you know what has been the matter last night?' he said, 'No.' I said, 'All your silver and things are about.' He looked very pale and agitated. He did not make me any answer. He came out of his room, and put his coat on as he was going down the attic stairs. He went down instantly, I with him. He went down first. He was never so short a time dressing as that morning. The first room he went into was the dining-room; he then went down stairs into his own pantry, I followed him. There is a cupboard there, and drawers: these were all open. He made up to the drawers first, and said, 'My God, some one has been robbing us.' I said, 'Let us go up-stairs.' We both went up-stairs, I think, as far as the passage, and then I said, 'For God's sake let us go and see where his

lordship is.' We went up-stairs; he went first. I followed him close behind. He went into his lordship's bed-room by the cloth door. The door closed upon me, but I had the handle in my hand and went in immediately after. When you go in at the door there are three windows fronting the street, opposite the door. The head of the bed is against the wall, on the right hand as you go in. When I went in the prisoner was opening the shutters of the middle window; he would have to pass the foot of the bed to do that. I went about half way to the middle of the bed, at the foot of the bed, and *saw blood on the pillow.* Before I noticed the blood I said, 'My Lord, my Lord.' The prisoner said, 'Here he is,' or 'There he is;' I am not certain which were the words. I cannot say whether that was before or after I saw the blood on the pillow. On seeing the blood I screamed and ran out of the room. The curtains were closed on the side next the door, and about half way at the foot, the same as I had left them overnight. I left the prisoner in the room, and I think I ran part of the way up the attic stairs, and then I turned round and ran down into the street. I was going to my fellow servant the cook, when I thought I would give an alarm out in the street, and my screams awoke her. I left the house by the street door, and went over to No. 23, Mr. Latham's, and rang the bell: it is nearly opposite. Finding they did not come instantly, I rang the bell at No. 22, Mr. Lloyd's, and the footman came up the area steps immediately; Young, Mr. Latham's servant, came out while I was standing at the door. I told him what had occurred. I had left the front door of the house open when I ran out; I was not gone many minutes; I merely crossed the street, rang these two bells, and came back again. When I came back to the house, I think I met the cook at the bottom of the stairs or the passage. I am not positive. I then went into the dining-room. I do not know whether she followed me or not. At that time no stranger had come into the house. When I went into the dining-room I found the prisoner sitting on a chair in the act of writing. He had a pen in his hand, and a small piece of paper lying on a large book. He appeared to be writing on that small piece of paper. I said, 'What the devil do you sit here for; why

don't you go out and see for some one, or a doctor?' He said, 'I must write to Mr. Russell.' He did not continue writing; he only wrote about two words. I said 'Some one must go for Mr. Russell.' I knew him to mean the son of Lord William Russell: he lived at No. 9, Cheshunt Place, Belgrave Square. On my saying that, the prisoner got up and came to the street door; a sort of labouring man was going past, and the prisoner beckoned to him. I told him not to call such a man as that, and the man went on about his business. The coachman came a few minutes after, and ran for Mr. Elsgood, a surgeon in the neighbourhood. The police arrived a very few minutes after that. I went upstairs, when the police arrived, into the bed-room. When I went in I saw his lordship's face that time, and I saw a quantity of blood. There were two pillows put side by side, as if for two persons. His lordship lay on his right side, with his face toward the window. He was lying with his head on the pillow nearest the window, and the other pillow was lying behind him. There was a dressing-table in the room. It is one on which Lord Russell used to put his pencil-case and tooth-pick. He generally used to leave his rings, which he wore daily, on the table: they were five. I had frequently seen them there of a morning. His lordship would go down to breakfast and leave them there. There were no rings, or tooth-pick, or pencil-case there then. They were all gone. There was a purse there. I took it up; it was empty. The police then took possession of the house, and have remained in it to the present time."

Have you ever had conversation with the prisoner on the subject of money?—"Yes, the last time was on the Tuesday morning, the 5th. He said he had no money at home, and he had no money in the bank. I do not exactly remember what led to that conversation. He afterwards said he had 8*l.*, some odd shillings, in the bank; that was on the same day, in the same conversation. When he first said he had no money in the bank, I did not make any observation. He said all the money he had then was 5*l.*; when that was gone he must ask his lordship for some more, and that he had 8*l.* owing him on the books against his lordship. I said to him,

'Have you spent all the money I saw you take out?' He said, 'Yes.' I do not know how that conversation began; it was at breakfast. I had seen him take some sovereigns out of his box, when he came up into his bed-room, and I was in my bed-room, and he had some sovereigns in his hand, which he put into his waistcoat pocket. He said he had, for he had paid a tailor's bill. I asked him what bank he had money in. He said, 'In St. Martin's Lane.' I believe there is a savings-bank there. I told him that was the best bank he could put in. He said he was not so well off as when he first came to England. I never saw him with any bank-note."

Did he ever speak to you, or in your hearing, on the subject of Lord William Russell's property?—"Yes, on two occasions I heard him speak of that. The first occasion was before his lordship went to Richmond. He said, 'Old Billy was a rum old chap, and if he had his money he would not remain long in England.' I said his lordship was not a very rich man. He said, 'Ah, Old Billy has money, and if I had it I would not remain long in England.' The next occasion was before the Tuesday: he said the same words as before."

Do you mean to the same effect, or the same words?—"The same words."

Did you notice any thing particular in his conduct at any time?—"Yes, I did, several times. I noticed that he was looking into all his lordship's property, and every thing that he could. I asked him what he wanted in the rooms, and he told me he was looking after something—he has not told me what: this was before he went to Richmond. I cannot mention any article in particular which he appeared to be looking at. On one occasion I noticed that he had his lordship's dressing-case down in his pantry. It was not only in one room that I saw him looking, but every room. I do not know exactly what property his lordship had. One day he left his cash-box unlocked; the prisoner brought it down and said it was unlocked. His lordship was gone out for a walk at that time. The prisoner brought it down into the dining-room because his lordship was going to Richmond, and he always took it with him. He burnt a rushlight at

night in his room; I set up one that night; it was a whole rushlight. I left it unlit when I went to bed."

Cross-examined by Mr. Phillips. You have been examined several times before the magistrates?—Yes; I cannot recollect how many times; it was three, I believe, but I do not know how many times. I was also examined before the coroner. This is not the first time I have said I saw the prisoner looking not only into one room, but into every room, after his lordship's property. I said it before I ever went to Bow Street, to the solicitor who was there when first I was examined; I believe it was Mr. Hobler. I also said it to my fellow-servant. I have several times told what occurred, without mentioning that I saw him looking after the property. I gave evidence in the house of Lord Russell on the first or second day, I am not certain which. I believe what I said was taken down in writing; I have no doubt that it was. Mr. Mayne, the commissioner of police, was there. There was no magistrate present to my knowledge.

Now attend to me. On the oath you have taken, have you never said, "I saw my Lord murdered in the bed?"—No, Sir, I never did. I never said his lordship was murdered, the first time. I did not see his lordship when I first went in with the prisoner. I never said I did to my recollection. I really was that frightened, I do not know what I said at the moment. I know what I said in the room.

But did you ever represent that when you went the first time into the bed-room with Courvoisier you saw my lord murdered in the bed?—I saw blood. I did not know whether he was murdered. I never said that I saw him murdered in the bed. I am sure I never did. I did not see his lordship the first time.

I am asking what you said. If you said that on the first occasion, when you went in with Courvoisier, you saw his lordship murdered in the bed, would that be true or not?—I do not know whether I said murdered or killed. I think I said something to my fellow-servant. I think it was "killed." She says I said either murdered or killed.

I am talking of the time you went in with Courvoisier.

Did you represent to any body that, on the first view of the bed on that occasion, you saw my Lord murdered in the bed? —No, I do not think I said it. I could not say that, because I never saw my Lord then. I did not represent that I did to my belief. I did not to my knowledge. I cannot say whether I did or not. When I first went in, I saw blood on the end of the pillow. I said, "My Lord, my Lord," and ran screaming out of the room.

Court. In giving an account of this afterwards to some other person, was the expression you used that you had seen my Lord murdered in his bed, meaning lying in his bed murdered; is that what you said?—No. I recollect it now; I said some one has murdered his lordship. I said it in the street to Young.

Mr. Phillips. I am not asking what you said in the street; I ask you this, Did you ever say that, the first time you went into the room, you saw him murdered in the bed? —No; I am sure of that. I was examined before the coroner. To the best of my recollection I have always given the same account of what I saw in the room on the first occasion, as I have given to-day. It is a thing which impresses itself on my mind. I was that frightened I do not remember what I saw. On the second occasion I went in with Inspector Tedman, and saw his lordship's face. The expression I used to Courvoisier was, "Courvoisier, do you know if anything has been the matter last night?"

Pray had you the least doubt that a great deal was the matter?—No, I had no doubt at all. I did not think there was anything the matter, not so much the matter as there was, because I had frequently seen his lordship's letters strewed about, much the same as they were that morning. I never before found the passage strewed with things.

Had you any doubt then of any thing being the matter? —I did not know what to think. I thought there might be something the matter. I did not know whether the cook could give me any information; she was up later than me by a quarter of an hour. I did not know she could know all this in a quarter of an hour.

Why ask her?—Because I had nobody else to go to. I

did not know what to think when I saw the things in the passage; it surprised me very much. I went immediately up to the cook and told her what I had seen. I went into the parlour first.

Why not instantly go up when you saw the things in the drawing-room and in the passage?—I did not know what the things were laid there for; I knew nothing about it. I did not go into the parlour before I went up to her. I went up to the door to see the things. I did not examine the street door. I could see it from the bottom of the stairs. I went to it to see what the things were."

Were you not surprised to find it unchained and unbolted?—I sometimes have found it unfastened before. I cannot say exactly how long before; it might be before his lordship went to Richmond. Once Courvoisier had forgotten to fasten it; that surprised me. I was surprised at seeing the things strewed about the passage; but I was not so much alarmed till I went into the parlour. I then became more alarmed. I just opened the shutter. I went into the drawing-room to open the shutters, not to see if property was there. I did not suspect any thing when I went into the front drawing-room.

Although you had seen the desk twisted round, the drawers open, and the papers sticking out, you never suspected any thing wrong?—No, I did not.

Now it has been opened to us to-day, that Courvoisier never took the least trouble to give any assistance; if I remember right, you told me that the prisoner appeared to be writing, and said he was writing to Mr. William Russell?—He said he must write to Mr. Russell. I said somebody must be sent for him.

And after that he was about to send the first man he saw at the door?—Not that I know of; he beckoned to the man. He had sat about five minutes after I told him Mr. Russell must be sent for. When he beckoned to the man I gave him a push, and said, "Don't call such a man as that."

What did you mean by saying, "Do not send such a man as that?"—Because he did not look like a man to send

any where. I did not think the prisoner was going to send him for Mr. Russell; he was not a man I should send any where.

If you found a house robbed, and a murder committed, should you not send the first person you could find?—I do not know whether I should or not. I had been living at Mivart's Hotel. Lord William was stopping there a short time, not living there. He was living there about a fortnight. I left Mivart's after his lordship went away. I do not know how soon after, it might be a fortnight or it might be more. I did not go into any service after leaving Mivart's. I went into lodgings for two months. I then went into Lord William's service. I was dreadfully frightened after I found that his lordship was murdered. It was after that that I said to the prisoner, "What the devil are you doing there?" I am not in the habit of speaking so, but I did not know what I was about. I observed what he was about. I should not have said that had he got up and assisted me. I think it was quite right to apprise Mr. William Russell immediately of the horrid event that had happened. Belgrave Square is not very far for a man to ride on horseback; the coachman might have gone; Courvoisier might have gone for the coachman.

And might he not have taken the opportunity of escaping, if he was conscious of any crime?—He might have escaped. Our sleeping room is divided from Courvoisier's by a wall; when I went down with Courvoisier, and saw the things tossed about, I said, "Let us go and see where his lordship is."

Did you think anything was the matter with my Lord then?—I did not know what to think; he was unprotected, and nobody went to see. I found my fellow-servants safe.

Why did you not use the expression, "Let us go and tell his lordship the house is robbed," instead of saying, "Let us go and see where his lordship is?"—Those were the words I used. I expected to find him in his bed-room. I did not know whether he was in his bed-room or not; it is a small house. I had been into every room except the kitchen. I had not been into his lordship's bed-room then. I did not

know where he was. I did not expect any mischief was done to him at that time. I was anxious to see where he was. I had no doubt where he was. I believe there has been a great deal of inquiry and search made all about the premises. I saw a ladder on the premises; it has been there ever since I have been in the house; it was there before I went into it: all the police saw it, and knew it was there. I heard Inspector Tedman inquiring about the ladder. I heard many inquiries as to how anybody could have got over the walls.

Is not that ladder exactly the height of the wall which separates the yard of the premises from another?—I never noticed it; the ladder was not always kept in the yard. I never saw the ladder standing there before the morning of the murder. I did not see it till the police saw it; it was standing in the passage on the Tuesday, and I asked Courvoisier to take it away, and he took it and placed it there himself. I remember that now.

Standing in the house?—Yes; it had been left there on Monday; the late valet had been there hanging some pictures for his lordship, and left it there.

Did you desire Courvoisier to put it there?—No; I desired him to take it away. I saw where he took it to; it did not surprise me in the least next morning.

Did it reach to the top of the wall?—Not exactly, that I know. I never noticed it; it stood quite upright.

Was it leaning against the wall?—It must be leaning against the wall. I did not see it for a long time after. I saw it in the course of the day leaning against the wall. I do not know how far it was from the top of the wall; anybody on the top of that could easily have got over the wall.

Now you were in the house ever since this unhappy event took place; have you seen any people trying chisels, pokers, and instruments of all descriptions against the doors and wainscoting.—No; [*looking at the model*] this is the glass-door leading into the yard. I do not know of any experiment being made on that door and door-post since the police came into the house. I had not observed any marks on that door before the police came into the house; that is the door

through which I have gone scores of hundreds of times into the yard. I never noticed any marks on that door.

How did you find out that my Lord wanted a servant?—When I left Mivart's Hotel I asked the head-waiter, if he heard of a light place, to let me know; he said he would, and when his lordship came from abroad, he sent for me by one of the men out of the stable.

You have been asked about some examination of persons in the house in the presence of Mr. Mayne and Mr. Hobler; on what day was that?—I do not recollect the day; it was not the day of the murder. I was examined in the absence of the prisoner; the prisoner also went into the room to be examined in my absence; the other servants were examined separately, in the same way. We were all kept separate from each other; no one had been at that time charged with or accused of this offence to my knowledge. I never in my life had any quarrel, or cause of quarrel, with the prisoner."

Mary Hannell, the cook, confirmed the housemaid's story in all that fell under her observation. She saw both the front door and door leading into the yard bolted; was not disturbed in the night by any noise; heard the scream, ran down stairs, and saw the prisoner sitting with a slip of paper and pen. He said, "Oh dear! they will think it is me; and I shall never get a place again."

She said, in cross-examination, that "the prisoner seemed confused and agitated as the rest of us; there was nothing in his appearance to lead me to suppose more than that he was alarmed and agitated. There are silver forks and spoons which have been advertised and never found."

This was an excellent point for the defence. It might well happen that the burglar, being alarmed, carried off the more valuable plate, and left the pencil-case, thimble, and other trifling articles ready packed for carrying off, but comparatively worthless. Little could the able counsel, Mr. Clarkson, divine that, at the very moment he was enforcing on the attention of the jury the loss of the plate, its abstraction was in the act of being brought home to his client!

The butler at the next house spoke to the prisoner's distress. "As he was examining the body, the prisoner fell

back into a chair, and constantly kept saying, 'What shall we do!' At the end of ten minutes he began to examine a small dressing-case, and removed four rings; he said, 'I have lived with his lordship only five weeks, and what shall I do for my character?' The prisoner went with me to the bottom of the house; he then said, 'Oh, here is where they came in;' he pointed to the place where I was standing, at the foot of the staircase leading to the basement. I could see the door which goes into the back area from where I was, and so could he; that door was open; the prisoner took it in his left hand, opened it still wider, and said, 'Here is where they came in.'"

Cross-examined by Mr. Phillips. You say the prisoner fell back in a chair?—He did. I had an opportunity of seeing my Lord's neck and face when it was uncovered.

Was it not a spectacle to utterly shock and horrify anybody who saw it?—It was very horrifying, so much as to affect the nerves of the stoutest, strongest man; it certainly affected me."

Mr. Elsgood, the surgeon, "removed the towel from the face of the deceased, and found that the wound extended from the top of the left shoulder round to the part called the trachea; it went round to the right side of the trachea, dividing the throat: that wound was decidedly sufficient to destroy life, and immediately. At the commencement it was about four or five inches deep, and at the termination, I should say, about three; it was made with one incision, I should say, decidedly, and with very great force, by the parts that were divided; it was a wound that might have been made with a knife or some such instrument; the ball of the thumb of the right hand was nearly cut off; the left hand gripped the sheet; it had a firm hold of it. There was a pillow at the left side of the bed, down by his lordship's head, which was saturated with blood; which induced me to say, that had been used to prevent the gush of blood.

"It was utterly impossible that Lord William Russell could have inflicted the wound himself."

The situation of the premises to the back was then described according to a model, and the absence of any foot-

marks on the lead flat between the two houses, which was covered with dust, proved.

Baldwin, a policeman, the first of the force called in, but their name was Legion, saw a man sitting behind the door with his hands up to his face. "He had his face from me. I asked why he did not get up and render us assistance. He did not get up or take his hands from his face; he made no answer. I asked him after that, why in the world he did not get up and render some assistance? but he did not give any answer the second time. I turned round and said to Rose, another officer, 'Rose, he must know something about this.' The man made no answer to that—I never received any answer; he was near enough to hear what I said. I went to the back kitchen door, the door leading into the back yard, at the very bottom of the house; it was standing open. I examined the door. I walked out into the area, and I thought there was no break-in; I observed there had been marks of violence on the door. I then went into the butler's pantry, and saw a person sitting behind the door with his elbows on his knees, and his hands up to his face; it was apparently the same man as I had seen in the parlour: I told him I thought he had made a devilish pretty mess of it, and said 'You must know all about it.' He did not make me any answer. I then went and examined the back yard. There is a wall on the left-hand side, as you go out of the door at the back yard. On the top of the wall there is a lead flat in the upper yard. I examined the partition wall; it is white-washed, with a ledge of slate projecting about two inches. There were no marks on the wall, nor any dust brushed off; the ledge of slate was perfect, not broken. I took the steps and got up to the lead flat: from the state of the dust, a person could not have passed over it in the course of the night without marking it. I could not do it myself; I tried it with my hand to see if it would make a mark, and it did."

This officer made a very bad witness, and, either from confusion or a desire to deceive, prevaricated so much in parts of his testimony, that the Court placed little or no reliance upon it. The manner in which he was betrayed by Mr. Phillips into inconsistent answers is far from unin-

structive. Having denied that he was liable to make mistakes intentionally, the sharp practice of this English alguazil was thus adroitly exposed.

"A man doing a thing intentionally is a misrepresentation, not a mistake; but without intending it, have you not made a mistake in the course of this very examination at the house?—I do not know that I did; when I first examined the kitchen door, I thought somebody had broken in. I found afterwards there was no break-in. I thought there was at first when I saw the door standing open—I did not think so after I examined the door.

Did you not go down to the kitchen, examine the door, and first think somebody had broken in?—The door was standing open; it might have been a breaking-in I thought, till I examined it; I examined the door when I pulled it to, and could see there was no breaking-in.

Did you examine the door, and think there was a breaking-in at first?—How could I examine the door when it was open? I examined it as soon as I got outside. I did not think there was a break-in after I examined the door; I never said I did. It was from seeing the door open that I thought there was a break-in.

Have you heard of any reward being offered in this case?—No, never; I have been a policeman several years.

Now, on the oath you have taken, do not you know that a placard with a reward was sent to every station-house in London?—I never saw it, I never heard it to this day, I do not know what it is to this day. I never heard what the reward was; I never heard of it or of any reward. I have been in Lord William Russell's house three or four times. I have not talked to my brother policeman about this dreadful transaction; I have seen him several times, but had nothing to say to him. I have not talked to different policemen about the murder; it has been mentioned. I have not heard my brother policemen conversing about it, not with any parties belonging to the house.

I am not asking about parties belonging to the house, but about your own brother policemen; do you mean to tell the jury that you have not over and over again conversed with policemen about the murder?—I have certainly spoken to

one or two, but never conversed with anybody, nor with the parties belonging to the house; I have spoken to people I know.

To policemen?—Of course I have; I cannot say to how many I have spoken on the subject of the murder. I will not swear I have not spoken to twenty: I will not swear I have spoken to twenty. I might have spoken to twenty, thirty, forty, or a hundred.

Why then did you fix upon one or two?—I fix upon nothing; I spoke to nobody in no particular manner about it; I asked nobody no question, no policeman belonging to the house.

Do you mean to persist in saying you never heard of a reward being offered?—I do; I never was told of any reward. I can write my name; I cannot read much. I am not a very good scholar; I can read print in very large letters on placards. I belong to Vine Street station-house, Piccadilly. I am there every day. I cannot say how many policemen frequent that station-house; about 184.

Now 184 policemen frequenting the same station-house with you, do you still mean, on your oath, to tell the jury that you never heard of a reward being offered?—I never was told of it. I never heard of the reward. I do not know what the reward is. I never heard of any reward. I never was offered any thing, nor ever heard of any reward. I did not suppose you asked whether any reward was offered to me. I say I know nothing about any reward. I was never employed in searching for the missing spoons or forks. I never read of fifty pounds reward being offered for them myself. I am a very bad scholar. There was something read out in orders about it, in general orders.

What was read out about it in general orders?—*There was some reward,* but I do not recollect it. I cannot tell what the reward was for. I do not recollect the sum of money that was mentioned: it is a thing I do not take notice of, sums of money. I was present when it was read out. I do not know what sum of money was named. I cannot tell how long it is since it was read out to me; it cannot be so long as two months ago. I cannot tell whether it was one

month ago or a week ago. I cannot tell whether it was four days ago, or two days ago; it might be one day ago, for any thing I know. I cannot tell whether it was yesterday. I cannot tell you any thing at all about it."

The case was adjourned after the cross-examination of this self-contradicted witness, and it seemed just possible that the mistakes and mis-statements of too eager officers might lead to an acquittal.

The evidence for the prosecution was resumed on the morning of June 19th, after a hurried statement by Mr. Adolphus to the Court that most important additional evidence had been discovered, and that he was prepared to open these new facts to the jury, should their lordships consider such a proceeding advisable. C. J. Tindal recommended, as the fairest course, that the hearing of evidence should be resumed without further comment.

John Tedman, an inspector of police, was then called, and spoke to the bruises on the area door, made by a blunt instrument. "I could not tell exactly whether those bruises had been made by force from the inside or outside; the top part I thought at the time had been done from the outside, and the bottom part I thought had been done inside by the bolt at the bottom.

"There was a watch-stand on a night-table close to the head of the bed, but no watch in it. I also saw a Russia leather little box, and a mahogany box, which I have here, and two note-cases [*producing them*]. There was nothing in them. Upon finding these things, I asked the prisoner if there was any thing missing, pointing first to the watch-stand. He said, 'Yes, the watch was gone.' I asked him if his lordship had any money about him. He took hold of this note-case, examined it, and said, 'Yes, there was a ten-pound note and a five-pound note in that yesterday, in the box.' There was a book on the floor by the side of the bed with a pair of spectacles in it. I asked the prisoner, 'How did this book come here?' He said, 'I left his lordship reading that when he went to bed last night.'

The inspector found a variety of silver articles on the dressing-table, and half-a-dozen walking-canes in the room, four of which had gold about them.

"On finding these things I said to the prisoner, 'It is a very curious thief, to leave all this valuable property behind.' He said, 'It certainly is very strange.'

After describing a variety of other articles of value in the bed-room, Tedman went to examine the things left in the passage. "I asked the prisoner if they were his lordship's property. He said, 'Yes.' I said, 'No thief would ever leave this property behind.' He said, 'It is certainly very odd.' The area door of the front kitchen was undamaged; nothing arises from that; there is a door at the end of the street-door passage which goes into the yard. Half of that door is glass. That door was not disturbed or moved in any way; the chain was on it, and it was bolted. It had never been disturbed at all. The prisoner assisted me to examine that door, and pointed out some marks which I had not seen before."

Did you say any thing to him on the examination of that door?—Yes; I said, "Some of you in the house have done this deed." He said, "If they have, I hope they will be found out." I said, "There is not much fear but what they will."

Did you go with the prisoner into his own bed-room?—Yes, he showed it me. He took me up-stairs. I there found a purse containing a five-pound Bank of England note, and six sovereigns. I gave them up. I asked the prisoner how he got that note. He said he gave his lordship change for it a day or two ago, and the rest of the money was his own; he had had it some time. He showed me his box which contained his linen. I examined every thing in it as I went along, but saw nothing to tend to explain this case at all. He had the key of the box himself; it was left in the room; I left it with him, and he left the box open every day.

The prisoner was from that time, though not in custody, yet under the watch of the police, and the female servants also; care was taken to prevent their having any conference with one another. The prisoner was not debarred or hindered from going to his own room if he pleased. He was taken into custody on Friday, the 8th of May.

Tedman then spoke to the somewhat curious fact, that,

when he went to the box again on the 13th with Lovett, to get some clean linen, a pair of gloves, slightly stained with blood, dropped out of the shirt on his unfolding it. They might have been overlooked when the shirts were opened on the 8th, for they were not then shaken, or might have been placed there subsequently. He was asked, "When you examined the trunk before, had you examined with sufficient accuracy to tell whether they were there?"—and said, "I pulled the things out, and laid them on the bed; but I certainly did not examine so accurately as I did then. I had unfolded them, but not shaken them. The gloves dropped down when I shook the shirt; I did not perceive them when I unfolded it. I unfolded the shirt and did not find them before, and I unfolded it then and did not find them." Tedman noticed the prisoner's hands, but they did not show the slightest scratch or mark. "The women had access to the trunk, as well as the police. There was no speck of blood on any that he saw in the trunk on the 6th. There were a number of marks on the area door and post that were not there on the 6th."

Beresford, another inspector, thought that the marks had been made with the door open entirely. "I could scarcely tell with what instrument they had been made; my impression was then that they had been made from the inside, and with the door open. Upon further inspection and examination that opinion was altered. I think the marks were made by inserting some instrument between the door and the door-post. The door and door-post do not close exactly, and some instrument had been inserted. I think the marks were made by a person standing outside the door. They might have been made when the door was bolted and fastened, but I think the door was merely on the latch. I looked at the lower bolt; the socket of the bolt was not injured; it appeared as if it was slightly sprung; but, on more particular examination, I do not think it was; it was merely from rust and decay. There are a great many marks in the place where the bolt never met the socket. The door shuts in a rabbet; here is no mark on the edge even opposite all this violence. There are no marks on the door opposite to this to correspond with them, scarcely any violence at all."

The door and door-post were brought bodily into court, and Beresford pointed out to the jury the various marks. He also mentioned an experiment that he had made with a rush-light, to try how long it would take to burn down as far as the one he found in the room; it took about half-an-hour, as near as possible.

Being asked by Mr. Phillips whether there was a lock to the prisoner's chamber door, he stated that he could not really recollect; adding, "I was not in the house when you and Mr. Clarkson went up to that room. I do mean to say that I do not recollect whether there is a lock; I believe there is, but there may not be. On finding the marks on the door, my impression was that they were not made by a house-breaker, and that no housebreaker had got in; and my wish was to examine all the trunks, to find if there was any thing suspicious. I went to the trunk for the purpose of examining its contents; I took them out."

Pearce, another inspector, proved that he had made the marks on the door about which there was so much suspicion; and, as to the marks originally seen, was positive that some of them had been made outside, when the door was to, and some of them when the door was open — a breaking into the house could not have taken place by means of that door."

On Friday, Pearce made a thorough search in the prisoner's pantry, taking off the skirting-board by the fire-place, and found a purse with five gold coins and five gold rings,— one a wedding-ring; further on, the silver Waterloo medal and a ten-pound note folded up. "The prisoner was in the dining-room at the time I found these things. I went up there directly after finding them. I took the things I had found up with me, took them out of the purse, and laid them openly before him, and laid the note on the table before him. I said, 'I have found these things concealed in your pantry, behind the skirting-board.' He said, 'I know nothing about them. I am innocent; my conscience is clear. I never saw the medal before.' I took him down into the pantry and pointed out to him the places from whence I had taken the things. He again said, 'I am innocent, I know nothing about them.'

While he was there a workman found a split ring behind the pipe."

This witness was severely pressed by Mr. Clarkson, as to having extorted a confession. Unlike foreign tribunals, which subject the accused to mental torture, put all varieties of interrogatories to him, and consider as a test of skill the compelling him into a contradiction, our English courts abhor the practice of entrapping a prisoner; and are even too fastidious in denouncing admissions to constables. Aware of this inclination, the counsel thus severely pressed a too eager witness.

Now, will you have the kindness to repeat what you say passed between you and the prisoner when you say his answer to you was, "I am innocent. I know nothing about them; my conscience is clear?" — They are about the exact words.

I want to know what was the act done, or the words said by you, which preceded that observation of his? — I said, "I found this property concealed in your pantry."

What was the object of your making that observation to him? — I thought it my duty to acquaint him, because I suspected that he had put them there. I thought, as an officer, I was in duty bound to do it.

It was not to get a confession from him? — I never tried it. It was not for that purpose. It was for no other reason than I thought it my duty, in that stage, to make the prisoner acquainted with what was found, and where. I naturally expected he would make some reply. It was impossible for me to tell what reply I expected.

Do you really mean to tell the jury, and to pledge your sacred oath to that answer, that, in making that display of the things and telling him that, you had no object to obtain from him a confession? — I expected he would make a reply. I suspected what he might say might be evidence, it might be for him, and it might be against him. What I expected it is impossible for me to know. Am I bound to answer the question, what I expected?

Court. You can state what passed in your own mind. — I naturally expected he would make some remark, and I considered it my duty to make him acquainted with it.

Mr. Clarkson. On your oath, did you hope or expect, when you produced the things, and made that statement, that you would obtain from him a confession, or any thing to that effect? — I was anxious, decidedly, to do all I could in the case; but as to being anxious that he should make a confession to me, I was not particularly anxious. I felt an anxiety to arrive further into the state of the business. I am not aware that the question was an improper one.

Did you do that entirely of your own suggestion? — I suggested it first. Mr. Mayne, the commissioner, was in the room. He is a magistrate, I believe. I first suggested the producing of the things. I thought it my duty at once to make the prisoner acquainted with what had been found in the pantry. Mr. Mayne coincided with me. Mr. Mayne said, "Take the property up-stairs, and let him see it."

Now attend to this; did you not state this to the prisoner, — be careful how you answer — "I have found these things concealed in your pantry. Can you now look me in the face?" Did you make that observation? — Yes, I made that observation with others: those were the words.

On your solemn oath, why did you suppress those words when my friend Mr. Bodkin asked you the question, "Can you now look me in the face?" — I had no motive or reason for suppressing it.

How long after the reward was offered did you make the discovery in the skirting-board? — The property was found before I was aware there was a reward offered. I found the property on the Friday, and on that evening late, I think twelve o'clock, I called at the station-house, and found there was a reward offered. I have not the least notion what share I shall get if there is a conviction. The reward is upon conviction; if the prisoner is not convicted there will be no reward.

John Christie, a carpenter, examined the door so late as Saturday, the 13th of June. "The marks of violence on the outside were not, in my judgment, sufficient to have forced the door open, if it had been bolted: if forced open from the outside, the marks of violence must certainly have been greater."

Collier, another constable, then proved finding in the scullery another seal and signet-ring, and beneath the floor a sovereign. On the 14th he found two handkerchiefs near the top of the portmanteau spotted with blood, and a shirt-front also stained.

Shaw, police serjeant, found, on Saturday, the 9th, near the hearth, which had been taken up, the gold locket.

Crouin, another policeman, on Tuesday, the 12th, found the watch beneath the lead of the sink, which had been removed into the yard,— a small piece in front of the lead had been turned up and put down again.

Ellis, the former valet, identified the articles so curiously found as the property of Lord William Russell, and also the missing plate produced by Mr. Cumming, a solicitor.

The ten-pound note was identified as one that had been given to Lord William for a charitable purpose.

The providentially discovered witness, of whose very existence Mr. Adolphus was ignorant when he stated the case for the prosecution, Charlotte Piolaine, then gave her decisive testimony.

"My husband's name is Louis; he is a Frenchman. I am an Englishwoman. We keep the Hotel Dieppe, Leicester Place, Leicester Square. I know the prisoner. I think it is about four years ago that I first knew him. He came to a situation, to take a place in the hotel as a waiter. I do not recollect whether he told me his name; we used to call him Jean. French is generally spoken at our hotel. He staid with us a month or five weeks; it was not long. I never saw him since till about six weeks ago, I think. He then came to our hotel. It was on a Sunday evening. He merely asked me how I was. He staid about two minutes. He said, 'Do you not recollect me?' I said, 'No; I do not.' He said, 'I am John that used to live with you some time, over in the Square.' I recollected him then. He staid a few minutes, and then went away. I believe I asked him if he was in a situation, and he said, 'Yes.' I said, 'I am very glad of it.' He said, 'With a gentleman.' He did not tell me his name. I saw him again. I think it was on the Sunday-week afterwards. He merely came in and asked me how I was. It

was in the evening. He had a paper parcel in his hand. He asked me if I would take care of it till the Tuesday following, and he would call for it. I said, 'Certainly, I would;' and he left it with me, and went away. I put the parcel in a closet, and locked it up: it is a closet I use generally. I had no notion at that time what the parcel contained; it was a sort of round parcel, tied with a string and sealed. I never saw him since until to-day. I took the parcel out of the closet yesterday morning, for the first time. I was induced to take it out on account of what my cousin brought up-stairs in a French newspaper. He read it to me, and showed it to me. In consequence of that, I had some conversation with my cousin, and sent for Mr. Gardie, a chaser and modeller, I believe. I also sent for Mr. Cumming, an attorney, who is an intimate friend of ours. The parcel was opened in the presence of those persons; it had never been opened before, from the moment it came into my possession. [*Mr. Cumming here produced the parcel.*] This is the parcel; this is the brown paper that was over it. The parcel contained spoons and forks, silver, I suppose; two pairs of new stockings; and two instruments which I do not know the name of; a pair of dirty socks; a jacket; and something, I do not know what they call it, I think it is tow, round the plate. It is like ravelled rope; that would have the effect of preventing the plate being felt, or from jingling: it did not make the least noise. Mr. Cumming immediately wrote down on a sheet of paper what there was, fastened it up again, and brought it here, I believe. Before he fastened it up, we signed the inventory, to attest what it contained."

It was impossible that Mr. Phillips should refrain from cross-examining this witness without admitting the prisoner's guilty theft just previous to the murder. She was a perfect stranger, the locality of her hotel notorious, the coincidence of time when the discovery was made singularly remarkable; and the whole truth could not have been ascertained, nor full justice done between the Crown and the prisoner, had his counsel, through a misplaced delicacy, abstained from all questioning upon points which invited explanation. An adverse witness, utterly unknown, whose conduct, as it

appeared in the sequel, deserved all praise, but who might have been a secret agent of the police, was sharply cross-examined by Mr. Phillips.

About what o'clock in the day yesterday was this?— About four, I think. We have a billiard-table in our hotel. It is not much frequented; merely by the gentlemen who board and lodge in the house; there are few that come. It is not exclusively kept for the guests; any body can go and play that likes; any stranger may come in and play. There are no other games played in the house; not backgammon. It is a peaceful house. The police have not been there at all. No one was ever taken out of it; I think I can swear that. There never was any gang of suspected persons taken out of our house by the police, nor any person.

What did you mean by saying you think you could swear it? — Because I am never down in the billiard-room myself; but I never heard any noise. I do not think there is any gambling-house in Leicester Place but ours, and ours is not a gambling-house. I do not know whether the prisoner's name was Jean. I called him so for convenience sake, because it would be easy for us all in the house. I never knew him by any other name. We do not take in English papers at our house: I very seldom read them. We never take in any but French newspapers.

Have you not for the last five weeks heard continual conversations about this dreadful event, the murder of Lord William Russell? — No, I am never among the gentlemen down stairs, who have conversations. I have a husband, but he is in France; he has only been gone a fortnight. I have not heard my husband speak of the murder, to my knowledge; if he has I have forgotten it; but I do not think he has mentioned the subject to me. I do not walk in the streets on Sundays. I go to church sometimes. I have not observed the placards of the Sunday newspapers. I have never seen posted up in large letters, "The Murder of Lord William Russell," nor heard the confessions of the prisoner cried about the street. I think I heard of the murder the day after it was committed. I was certainly very much shocked. I do not know that I said anything to my hus-

band about it; it might have been named; I cannot recollect whether we did or did not speak of it. I have not time to think of these things; I am always occupied. My husband and I very seldom dine together. We breakfast together sometimes. I do not know whether it was my occupations that prevented my mentioning it to my husband. I cannot say whether I was too much occupied to hold any conversation with my husband during the three weeks. That is a question I cannot answer.

Mr. Adolphus. You have been asked about the reputation of your house; is there any pretence on earth, to your knowledge, for calling it a gaming-house? — No; the police have never to my knowledge broken in and taken any one out. It has never happened while we have lived there.

Respecting your conversation with your husband, do you, like other women, converse with your husband on things that pass, and think no more of it after it is over? — Yes.

Whether you heard of the murder of Lord William Russell, or not, could you have any idea that *Jean* was the same person as François Benjamin Courvoisier who was accused of the murder? [*These questions in re-examination are not very accurately framed.*]—No. Parcels are sometimes left in our care, at the counter down stairs. I put the parcel in question in my closet, and locked it up. I never moved it out. It was put at the bottom. The closet is in the first floor. The billiard-room has no connection or communication with that. The billiard-room is on the parlour floor. Whoever come to play at billiards have no business up-stairs. There is no backgammon-table in our house.

Court. You have said you heard of this affair the day after it happened? — I believe so.

Can you tell how long before that it was, that the parcel was left with you? — I think it might have been a week or a fortnight. I cannot positively say.

The statements of Madame Piolaine were confirmed both as to the parcel being left on a Sunday, five or six weeks from that time, by a man whom the witness Gardie did not know; and as to opening it, Mr. Cumming, a solicitor, explained more fully what followed. "I opened the parcel myself,

and made this list of the articles that were in it. I then did it up again: before doing so I noticed a crest on the forks and spoons. After doing it up I proceeded to a bookseller's shop, in order that I might see by the Peerage book the crest of the Bedford family; and having satisfied myself that a goat, which was on the spoons, was the crest of that family, I immediately proceeded from Ridgeway's, the bookseller's shop, to Marlborough Street, for the purpose of seeking the advice of a magistrate, and to be relieved from the possession of the parcel. I saw an officer, who introduced me to the clerk of the magistrate, and I made a communication to him. In consequence of a communication from him I immediately came here in a cab; I arrived here about six o'clock. I sent in a communication by note to the solicitor for the prosecution, and was directed to come in. I then made a communication to Mr. Wing and Mr. Hobler." Mr. Cumming then read his list of the articles: "four silver table-spoons, four silver dessert-spoons, two silver tea-spoons, four silver forks, one leather box containing two instruments for the ear; two pairs of white stockings (no mark on them), one pair of white socks, with 'C 4' on each; and a small quantity of tow or yarn."

Mr. Phillips contented himself with a single question, — he could not safely press further inquiries — whether Mr. Cumming knew he was one of the counsel for Courvoisier? It was not the duty of the witness instantly to communicate with the advocate for the prisoner, and inform him of the important discovery, damning though he must have known it to be to the accused; but the possible want of candour in not at once apprising counsel of the fresh evidence he had to adduce furnished a topic for remark which, however slight and feeble, the exigency of the case would not permit Mr. Phillips to reject. The brown paper parcel in which these articles of silver plate were inclosed, was then identified by a printseller in Pall-Mall. A print called the Vision of Ezekiel, which had been sent to Lord William Russell's on the 27th of April, was folded in it, and the ticket was still on the paper. The instruments for the ear, which Courvoisier's rapacity had led him to pilfer for the sake of the silver, were also identified

by an aurist, as those which he had made for the deceased nobleman in 1836. Some unimportant evidence as to the identity of the socks and jackets, and height of the partition wall, was then given, merely proving the anxiety of those who conducted the prosecution, that not a particle of evidence, even the most minute shred, should be overlooked; and with the re-examination of Sarah Mancer, to prove that the prisoner had remained in Norfolk Street from the time the murder was committed till he was taken away in custody to prison, leading the jury to infer whose hand secreted all the valuable property behind the skirting-board, Mr. Adolphus closed his overwhelming case.

Never had advocate risen to speak under circumstances of more appalling difficulty, on a question of life and death:—oppressed by a horrid secret, borne down by most weighty evidence discovered at the very instant of time, when, from its sudden unexpectedness and cogency, it could most effectually embarrass the defence, struggling against his inward conviction, and crushed by a mass of proof, Mr. Phillips yet spoke for three hours in defence of the guilty wretch who, in the most sacred of all confidences, had placed his sole, entire, reliance on his advocacy; and, in commenting on the speech for the prosecution, on the eagerness of the police force who supported it, and on the many circumstances that lingered round the case, of doubt and difficulty, and suspicion, invested powerful language with a high degree of imaginative and pathetic eloquence. It is to be regretted, for the sake of the speaker and the profession, that no accurate authorised short-hand writer's note was taken, no revised report made of a remarkable rhetorical effort, which, under the distressing circumstances attending its delivery, ought to have been reviewed in a spirit of generous criticism, and not to have been examined as through a microscope, exaggerating each little speck and blemish, in a tone of disparagement and detraction.

We may well wish that no other high-minded and eloquent advocate may ever be placed in so disheartening a position; but could we suspect that any, so circumstanced, would betray his client's secret, and abandon his defence, a more

painful and perilous professional situation, if such could be found, need not be deprecated.

"The horrid nature of the crime itself, the rank of the deceased, the numerous connections mourning their bereavement, the opinions promulgated before the prisoner could be heard, the fact that his case had not been left to the ordinary instruments of justice; but that speculation had been stimulated by the offer of a government reward, as if the grave knew any aristocracy,—these things did fill him with apprehension. And when he looked around him on that crowded court, and saw the intensity of the public gaze, and almost heard the throb of popular indignation, and when he turned him to the dock where the wretched object of this outburst stood, alone amid this multitude, far from his native land, far from the friends that loved, and the associates that, in his hour of danger, would have crowded around him,—a poor, solitary, isolated, helpless foreigner,—he did own that he should feel his spirits fainting fast within him, were it not for the anchor that was centered in the breasts of the jury. He relied upon their integrity, upon their sense of justice; he participated in that generous reliance which the prisoner showed, when he refused all foreign interference, and trusted his life to a jury of Englishmen. He thought the prisoner was right; he had no fear in appealing to such a tribunal. He knew that the case, whatever it was, would, by such a tribunal, be fairly, fully, impartially, heard, and justly decided. He should proceed, then, to consider the most extraordinary and unheard-of circumstances of this case. And having done so, he should submit that in such a case, wrapped up in clouds, in mystery, and darkness, there was not only nothing upon which they could safely convict the prisoner, but that here and there probabilities started up which might make them suspect that he had been made the victim of an unjust and depraved conspiracy.

"He had great reason to complain of Mr. Adolphus's opening address, of the prejudice he endeavoured to introduce, of the manner in which he had argued upon hints and inferences, and pressed, as topics of certainty, matters of mere suspicion. He had himself anticipated, that the new act

permitting counsel to speak for prisoners, would make a court of criminal jurisdiction the arena of angry passions, and place the life of a fellow-creature in peril or in safety, just in proportion to the skill and talent of his advocate. He should be glad to know from the judges who presided there, whether it was not startling to them, after the experience of their early life, when such a thought never entered into the head of any advocate, to find the defence of a prisoner anticipated; to find that defence answered by anticipation; to find appeals to passion and prejudice, where every thing should be decided by the coolest reason. . . .

"'This man is a foreigner,' said Mr. Adolphus, 'and foreigners always murder when they rob!' That expression filled him with horror. In the name of the human race, he protested against it! All men who did not belong to this country were foreigners, and it was a libel upon the human race to utter such a statement. He declared most solemnly that, when he heard it uttered, his countenance sank; he was ashamed to look up for fear he should meet the glance of some of these representatives of foreign countries who had filled the court; he was ashamed to see what their sensations must have been, when they heard an English advocate utter such a slander on their nations. But it was not true. Let them maintain the character of England, high and noble, as it stood, but let them not seek to erect a character on the ruined reputation of other countries; it was a bad compliment to us. We needed not detraction. Oh! it was a wicked calumny to raise against the prisoner; it was historically untrue to say that it was the common practice of foreigners to murder when they robbed. Mr. Adolphus was a historian, and history ought to have taught him the character of Courvoisier's countrymen. His studies ought to have taught him that, if there were in any corner of the world a nation free from crime, it was that Switzerland of which he was a native. Let the jury search their memories, and see if they could recollect an instance of a Swiss murderer. They rob, said the counsel, who ought to be cool and dispassionate, and state nothing but the fact, 'and murder whom they rob!' He believed that instances of robbery were very rare in that

country; he was sure that instances of murder were still more rare. And yet a gentleman who ought to have addressed the jury temperately and calmly, set out by insisting that because the man at the bar was a foreigner, he was a murderer. He had the experience of five or six days in observing the manner in which the jury had attended to the cases, and he believed from his heart and soul, that the attempt to excite a prejudice in their minds, upon any such ground, would be entirely frustrated. Let him beseech the jury, for that was the way to test the generosity of the expression, to imagine for one instant that they were in a court of criminal justice in Paris or Madrid, and saw an unhappy fellow-countryman arraigned on trial for his life: to imagine the advocate, whose bounden duty it was to state the facts on which he founded his accusation guardedly, accurately, truly, rising and saying to the jury, 'Gentlemen, this man comes from the country of Patch and Greenacre and Thurtell; and Englishmen murder when they rob.' With what burning indignation would their souls be filled! Could they restrain their indignation at the attempt to make an individual the victim not merely of other's crimes, but of a foul calumny upon his country?

"There was another topic in the opening speech, of which he, as counsel for the prisoner, had just right and title to complain. Mr. Adolphus had told them it was not necessary, forsooth, that a man must have a motive. He knew that if he were to ransack the annals of his thirty or forty years' experience, he could find no instance in which a man committed a crime without a motive, and he knew equally well that, if he were to torture his ingenuity to the quick, he could attribute no motive to Courvoisier for an attempt of this nature! There were motives of hatred that might prompt to crime; there were motives of jealousy that might inflame men to madness; there were motives of revenge that might tempt men to murder; there were motives of avarice and plunder that might instigate men to the perpetration of wickedness. Try by that test the motives of Courvoisier. He had a kind master, there could be no hatred; of motives of jealousy, there breathed not a whisper; there could be no

revenge for benefits duly received, there could be no need of murder to enable him to plunder, he had an hourly opportunity: he was the confidential servant who accompanied him on his journies, and saw him to his repose. Instinct taught the criminal to fly. There was a chance that he might outstrip his pursuers—might not be pursued at all —might not be suspected. But here was a man alleged to have committed a most dreadful crime, remaining in the house after its commission, as if to be detected, committing the crime without motive, with the chance, nay, almost the certainty of escape, and not seeking to avail himself of the opportunity thrust upon him for escape. Several circumstances that occurred on the morning the murder was discovered, though doubtful and ambiguous, in some aspects favourable, had been tortured by his learned friend into proof 'strong as Holy Writ' of his client being the murderer. Was the man's agitation a sure sign of guilt? What would have been said if he had remained calm, and looked on unmoved? Would they not have thought, and thought justly, that the man who did not shudder with agitation at such a spectacle, was himself capable of committing the deed? Thank God! he had not yet met with that demon in the shape of man, who could look on murder without agitation. The prisoner had given assistance as soon as he could apply to business, his nerves being unstrung. He began to write to the son, the most natural thing he could do, when he was accosted with the feminine exclamation, 'What the devil are you doing?' He stopped the first man. Was that a time to look at the exterior of the messenger? Might he not have gone himself as messenger, had he wished to escape? He had preferred remaining in the house, and, though tortured with questions by the police, had not answered a single question incorrectly. The cause of his being taken into custody proved to be groundless. The locket found on him was his own. The impression of the crest, the family seal, was a goat. The man, it was thought, who had stolen the seal, would have the impression. The prisoner declared it had been given to him by Mr. William Russell, and so it had."

The eloquent counsel then commented with indignant

vehemence on the prevarications and practice of the police; suspecting, as he undoubtedly did, that they had made themselves active partisans, and had tampered with their oaths, to secure a conviction. In this suspicion he was doubtless unwarranted; but there were some remarkable features in the evidence to excuse the jealous fears of a sensitive counsel imbibing it, and the real guilt could only have been matter of surmise and inference at the time of their search, and of their giving evidence in the witness-box. Had their conduct justified the aspersion, no epithets could have been too severe for such trafficking in blood. These remarks have been already quoted, with the few hints, which her confused evidence seemed to excuse, for distrusting the entire credibility of Sarah Mancer. With the discovery of the stolen articles Mr. Phillips grappled boldly; but the effect of this was too strong and cogent for even his practised ability to overcome. He made, indeed, the most ingenious hypothesis that the case would bear.

"Had Courvoisier committed the murder, his own pantry would have been the last place he would have resorted to for the concealment of the stolen goods. On the property really belonging to him, and really there at the time of search, there was not one spot of blood discovered. If he had murdered his master, was it possible there should have been no taint of blood on his person, not a speck on his clothes? There would have been stains under the nails, which, like the damn'd spot on Lady Macbeth's hands, no water could wash out. New evidence had been sprung upon him like a mine under his feet, and not a night's interval allowed to ascertain the character of the witness. How could a French paper make Madame Piolaine suspect a man of whom she had never heard?

"The circumstances that induced this dame in Leicester Place to communicate her deposit, were most strange and improbable.

"Much had been made of an expression which fell from the prisoner; 'I wish I had Old Billy's money, I would not be long in this country.' Yet it was not an unnatural wish for a foreigner to express, toiling for his daily sustenance, yet

longing to revisit his fatherland, rugged though it be. 'I wish I had the wealth of such an one, I would not be long away from my own country.' Ambition's vision, glory's bauble, wealth's reality, were all nothing as compared to his native land. Not all the enchantments of creation, not all the splendour of scenery, not all that gratification of any kind could produce, could make the Swiss forget his native land:—

> "Dear is that shed to which his soul conforms,
> And dear that hill which lifts him to the storms:
> And as a child by jarring sounds oppress'd,
> Clings close and closer to its mother's breast;
> So the loud torrent and the whirlwinds roar,
> But bind him to his native mountains more."

"There never dropt from human lips a more innocent or natural expression, 'I wish I had Old Billy's money, I would soon be in my own country.'"

Mr. Phillips, after arguing against the probability of Courvoisier being the murderer, from the known peaceful habits of all his countrymen, from their good faith and trustworthiness, burst into the impassioned appeal before referred to: "But you will say to me, if the prisoner did it not, who did it? I answer, ask the Omniscient Being above us who did it; ask not me, a poor, finite creature like yourselves; ask the prosecutor who did it. It is for him to tell you who did it; it is not for me to tell you who did it; and until he shall have proved by the clearest evidence that it was the prisoner at the bar, beware how you embrue your hands in the blood of that young man. And having now travelled through this case of mystery and darkness, his anxious task was done; that of the jury was about to begin; might God direct their judgment! One of the attributes of the Almighty was that day given to them, the issue of life and death was in their hands. To them was given to restore this man once more to the enjoyments of existence and dignity of freedom, or to consign him to an ignominious fate, and brand upon his grave a murderer's epitaph. His had been a painful and an awful task, but still more awful was their responsibility. To violate the living Temple which the

Lord himself had made,—to quench the spirit in that clay which the breath of the Lord had kindled,—was an awful and tremendous responsibility. The word once gone forth was irrevocable. Speak not that word lightly. Speak it not on suspicion, however strong; on moral conviction, however cogent; on inference, doubt, or any thing but a clear, irresistible, bright, noon-day certainty. He spoke to them in no spirit of hostile admonition; Heaven knew he did not. He spoke to them in the spirit of a friend and fellow-christian; and in that spirit he told them, that if they pronounced the word lightly, its memory could never die within them. It would accompany them in their walks; it would follow them in their solitary retirements like a shadow; it would haunt them in their sleep, and hover round their bed; it would take the shape of an accusing spirit and confront and condemn them before the judgment-seat of their God. So let them beware how they acted."

It would be superfluous to describe the clear, calm, dispassionate charge of Chief Justice Tindal, further than to notice his exculpation of the different witnesses, whom the speech of the prisoner's counsel had loaded with suspicion. "The remark of Mancer, that she had seen her master murdered in his bed, was a very natural, though grammatically inaccurate, phrase; meaning she saw him where he lay murdered. There was no real, only a verbal, contradiction between her evidence in court and before the coroner. He considered that her saying, 'Let us see where his lordship is,' was a very natural expression of anxiety in a faithful servant for his safety." Having thus poured balm into the wounded feelings of the housemaid, the just and equable judge proceeded to clear, so far as his own judgment went, the police from aspersion. He thought that the gloves stained with blood might have escaped observation, when the shirts were merely unfolded, and have dropped out when they were shaken. The jury would have considerable difficulty in coming to the conclusion that the various articles concealed in the pantry had been placed there by the police with the wicked object of convicting the prisoner. There was no impropriety in offering a large reward for discovering the

perpetrators of this heinous murder. Crime would often go undetected, and officers become supine, unless they were stimulated on important occasions, by the hope of a reward. With regard to Madame Piolaine, she had performed a great duty to society in an unexceptionable manner, and left the court without the slightest imputation."

The jury, after being instructed by a most careful repetition of all the facts, with those apposite remarks which could scarcely fail to guide them to a just conclusion, withdrew, and returned into court at the end of an hour and twenty minutes, with a verdict of Guilty.

Courvoisier was proved to be

> "A name the pale air freezes at,
> And every cheek of man sinks in with horror,—
> A cold and midnight murderer."

Chief Justice Tindal immediately passed sentence of death, prefacing it with a few appropriate observations.

"The age of your victim, his situation of master, had no effect on you. To atone to society, which has received a shock by your crime, and to prevent the recurrence of it, you must suffer a speedy and ignominious death. What may have been your precise or actual motive it is impossible to state. I fear it has been the lust of filthy lucre. It has been demonstrated in this instance by the providence of God, in no ordinary manner, that the crime committed in darkness should be brought to light. The crime of murder is, without exception, the deepest that can be committed, coming before us, in this instance, under circumstances of peculiar aggravation."

A petition was afterwards forwarded to the Home Office, with more zeal than discretion, to spare Courvoisier's life; but it could not be regarded without abolishing the punishment of death in every instance, and on the 6th of July, 1840, the convicted murderer was executed.

NOTES TO COURVOISIER'S TRIAL.

Note 1.

The advocate's line of duty is not inaptly described by that shrewd observer, Crabbe: —

> "Curious conjectures he may always make,
> And either side of dubious questions take."

"Our profession," says the quaint, stout-hearted Sir J. Davies, at the close of the preface to his Reports, "may be justified in all points against ill-contented suitors, who, like choleric chess-players, when they have had a mate given them, could find in their hearts to cast both chess-board and chessmen into the fire."

For a full and complete defence of the time-honoured usage of the profession in advocating one side, the reader is referred to Mr. Stammers' excellent pamphlet on the case of R. *v.* D'Israeli; to the review in the Law Magazine of O'Brien's lawyer; to the article in the Monthly Law Magazine on the duty of advocates; and to the remarks of Lord Erskine on the subject of retainers, in the State Trials.

Note 2.

When defending Burke and Helen M'Dougal before the High Court of Justiciary at Edinburgh in 1828, on a charge of the most cold, hypocritical, and sordid murder recorded in the annals of crime, stifling life to sell the body for dissection, both Mr. Jeffrey, then Dean of Faculty, and Mr. Cockburn, eloquently inculcated the same topics of defence as those on which Mr. Charles Phillips insisted. "The inference," said Mr. Jeffrey, "is not to be drawn that, because it is a case of atrocity, we are, in trying the guilt alleged against the prisoner, to be satisfied with anything short of clear legal evidence, or are to proceed on mere suppositions, or on that which may amount to no more than mere probability. She may have been murdered by Hare the approver when he was out of the way. It is very true I do not know that this is the fact. I am not bound to prove the prisoner's innocence. It is the duty of the prosecutor to fix guilt upon him, so as to exclude any other supposition. The murder may be left in mystery, and yet there may be no ground for legal conviction. The principles and rules of evidence are among the most sacred rights of the people of this country, and any violation of them under the influence of feeling would break down the securities under which we all live." Mr. Cockburn added his emphatic caution. "The prosecutor is bound to prove his case; and, if he fails, no matter from what the failure may proceed, the prisoner is entitled to an acquittal. Nay more, if there be a doubt—I mean a rational doubt—the prisoner is entitled to the benefit even of this. The cry of the public for a victim is one to which

you, who are set apart from the prejudices of the public, and are sworn to look to the legal evidence alone, must be completely deaf. Let the public rage as it pleases. It is the duty and the glory of juries always to hold the balance the more steadily, the more that the storm of prejudice is up. The time will come when these prejudices will die away. In that hour you will have to recollect whether you this day yielded to them or not, whether you gave way to your extra-judicial impressions." With regard to epithets on the witnesses, though never certainly were epithets more just, Mr. Cockburn spoke of the approver Hare as this squalid wretch and *monster!*

NOTE 3.

Lord Brougham has declared, that the "Recollections of Curran," by Mr. Charles Phillips, is one of the most delightful pieces of biography in the language, and they who dispute his lordship's judgment scarcely deserve so pleasant a penalty as to be required to read it.

THE TRIAL

OF

DANIEL M'NAUGHTON

FOR THE MURDER OF MR. EDWARD DRUMMOND,

BEFORE LORD CHIEF JUSTICE TINDAL, MR. JUSTICE WILLIAMS, AND MR. JUSTICE COLERIDGE,

AT THE CENTRAL CRIMINAL COURT, OLD BAILEY,

Friday, March 3. and Saturday, March 4. 1843.

Counsel for the Prosecution: The Solicitor-General, Sir William Webb *Follett*, Mr. *Adolphus*, Mr. *Waddington*, Mr. Russell *Gurney*.

Counsel for the Prisoner: Mr. *Cockburn*, Q.C., Mr. *Clarkson*, Mr. *Bodkin*, Mr. *Monteith*.

STRIKING is the resemblance between the commission of the crimes of Bellingham and M'Naughton, and still more striking the dissimilarity of the manner in which those crimes were visited by the law. Both fired at unoffending strangers in the prime of life, who had done them no wrong; to whom their very persons were unknown,—in the most public place, and in the most open manner. Both had brooded for years over imaginary persecutions, and deemed themselves justified in exacting vengeance from the public functionaries, who might have, but who had not, extended protection. Both watched for days the best method of effecting their object, and rejoiced in accomplishing it. Both appeared of reserved, melancholy temperament, and susceptible of religious impressions. The one was reading extracts from the Bible, and the other had attended the Church service the day before the

murder. There existed this remarkable distinction between the two cases, that the misfortunes of the first were real,—of the other delusive. Both suffered from fancied wrongs; but there might be some slight ground for suspecting injury in the one case, there could be none in the other. The murderous act might spring necessarily from the delusion in M'Naughton; but a jury must have paused long ere they could pronounce it the inevitable result of frenzy in Bellingham. Still, the precipitancy with which vengeance, under the disguise of justice, smote its victim; the stern resolve not to delay one single week for inquiry from persons then on their way to London, deserves, and has received, the gravest censure. A man universally beloved in private life,—none could be more amiable than Mr. Perceval—had been basely murdered, and the nation woke from a paralysis of horror into the delirious fever for revenge.

At five o'clock on the afternoon of Monday, May 11th, 1811, the Premier was assassinated by Bellingham in the lobby of the House of Commons; at the same hour on the following Monday, the dead body of the assassin lay exposed in the dissecting-room! Within seven days he had been examined before the magistrate and committed to Newgate, a true bill had been found, he had been tried at the Old Bailey on the Friday, convicted, sentenced, and executed at eight o'clock on the Monday morning that succeeded the murder: a cruel, unrighteous, intemperate haste,—an eager thirst for retribution, not slaked certainly at the fountain of justice. The fervour of popular excitement and indignation, which did not admit of a calm and tranquil investigation into the state of the prisoner's mind, furnished unanswerable arguments for delay. The result of the trial might have been, probably would have been, the same; but the judicial disgrace and national opprobium that accrued from this intemperate haste would have been averted. For the opinions of those best qualified to judge are still anxiously divided on the question, whether, under all the circumstances, Bellingham was a free agent, and responsible for his acts. Formerly a Liverpool merchant trading to Russia, he had been imprisoned for some years in that country on account of a debt, his liability to

which he denied, the result of some ruinous mercantile speculation; he had complained bitterly of the wrongs which he suffered at the hands of the Russian government, and claimed redress through the British ambassador, Lord Francis Leveson. That nobleman exerted himself to the utmost, but ascertained, at the close of a long correspondence, that the English trader had no real cause of complaint; that he had been dealt with justly, however harshly, according to the law of the country in which he resided. Bellingham would not believe that Lord Leveson had displayed the slightest spirit or energy on his behalf, and attributed his long incarceration and insolvency to the supineness of the British representative at Petersburgh. On his return to England, he pestered all the Government officers with applications for redress; was at length summarily dismissed, and wrote a note, in his desperation, to the magistrates at Bow Street,—a remarkable proof of his strength of mind being shaken—that, if they did not compel a remedy, he would take justice to himself. He signed the threatening letter with his true name and address; and it is to be regretted that some effectual notice was not taken of this strange menace; but the authorities slighted it as the effusion of a madman. In the following month he shot Mr. Perceval through the heart, and, as calmly as Felton when he stabbed the Duke of Buckingham, surrendered himself a willing prisoner. He said, apparently unmoved, "It is a private injury. I know what I have done. It was a denial of justice on the part of government!" He had been often in the gallery; and had, on the Friday before, been watching the entrance of every member into the lobby with great attention. He declared openly that he had, for more than a fortnight, watched for a favourable opportunity of effecting his purpose. "I could gain no redress at the public offices, and was told to do my worst. I have obeyed them. I have done my worst, and I rejoice in the deed." He wrote a note from Newgate to his landlady, stating, "For eight years I have not found my mind so tranquil as since this melancholy but necessary catastrophe, as the merits or demerits of my peculiar case must be regularly unfolded in a criminal court of justice to ascertain the guilty party by a jury of my country."

On Friday, the 15th of May, he was tried at the Old Bailey, before Sir James Mansfield. Mr. Alley applied for a postponement of the trial, and read an affidavit of Ann Bellitt, averring in direct terms the insanity of the prisoner, which was known to several witnesses at Liverpool and elsewhere. He appealed to the justice and humanity of the court to let the trial stand over till they could be subpœnaed to appear. The Attorney-General, Sir Vicary Gibbs, greatly to his discredit, resisted the application, and declared in his bitter style, that the prisoner had displayed a masculine understanding! The application was peremptorily overruled, Sir Vicary Gibbs, as if to exasperate their feelings, then stated to the jury a pathetic truth, "that the crime had been perpetrated against a man who, if sufficient life had been allowed him, after he had received his death-wound, would have employed it in breathing a prayer to heaven for the forgiveness of his murderer." The same mild spirit that would have uttered such a prayer would have anxiously desired the state of mind of his murderer to have been calmly investigated, that he might not be punished if he were irrational, and knew not what he did.

Bellingham spoke for two hours, recapitulating his wrongs —six years' imprisonment in Russia; yet Lord Leveson afforded him no redress. He regretted that lord had not fallen by his hand instead of Mr. Perceval. [*A murmur of disapprobation, we are told, ran through the court at this vindictive declaration.*] He had given notice at Bow Street he would take justice into his own hand, when he was told he might do his worst. He was obliged to the court for their setting aside the plea of insanity. Whenever he should appear before the tribunal of God, he should be adjudged innocent of wilful murder."

The more calmly and firmly that the unhappy prisoner spoke, detailing his grievances with such a lively retrospect of endurance as to weep bitterly during the enumeration, though his hearers listened unmoved, — justifying, almost glorying in the deed, — the more hardened became a jury unaccustomed to the developement of insanity; and, so far as speech could avail a foregone conclusion, the prisoner sealed

his own doom. In vain did the witness, Ann Billett, prove that his father had died insane, and mention the names of persons who could depose to the son's madness. The only other witness, a servant at the lodgings, spoke to his quiet and apparently rational deportment; that he was orderly and regular in his habits, and went to the Foundling Church twice on the previous Sunday in company with her mistress.

Chief Justice Mansfield declared that he saw no reason whatever for supposing that the prisoner was an irrational and irresponsible agent. "There is a species of insanity where people take particular fancies into their heads, who are perfectly sane and sound of mind upon all other subjects; but that is not a species of insanity which can excuse any person who has committed a crime, unless it affects his mind at the particular period when he commits the crime, so much as to disable him from distinguishing between good and evil, or to judge of the consequences of his actions. Did the prisoner know he was committing a crime, when he committed this act?"

The jury at once convicted Bellingham, who avowed a firm conviction to the last that he had committed an inevitable deed, that he was an innocent agent in performing a justifiable act. He was executed without the least sympathy for his hurried fate, or the slightest public manifestation of feeling that justice in mercy had been withheld from him. Burning indignation at the crime absorbed all compassion for the criminal.

A generation passed away, and the hand of the moody assassin morbidly brooding over imaginary wrongs was again uplifted against a stranger quietly walking in the public street, equally amiable with Perceval, and equally unoffending. How widely different was the measure of justice dealt out to M'Naughton, how marked the improvement in humanity! Horror and amazement at the deed overspread the whole community, but in their anger they were just. When the unhappy murderer was brought before the late Lord Abinger on the 2d of February, at the Central Criminal Court, a fortnight after the murder, and called upon to plead, he made at first no reply to the question, but kept his eyes

steadily fixed towards the bench. When pressed to answer, he said, after hesitating for some time, "I was driven to desperation by persecution." Being told that he must answer the question Guilty or Not Guilty, he said he was guilty of firing, and the Chief Baron interfered, "By that do you mean to say you are not guilty of the remainder of the charge; that is, of intending to murder Mr. Drummond?" The prisoner at once said "Yes;" and Lord Abinger rejoined, "That certainly amounts to a plea of Not Guilty; therefore, such a plea must be recorded."

The prisoner's counsel then moved for a postponement of the trial on affidavits that the attorney would, by the next session, be in a condition to lay before the Court and Jury material evidence touching the unsoundness of mind of the prisoner before, and near to, the time of the commission of the act with which he stood charged. The Attorney-General, Sir F. Pollock, offered no opposition to the motion. He felt bound in justice to say that he had seen the depositions alluded to, and they certainly contained matter which it would be very proper to lay before the jury, who would have to try the prisoner. He would also add that those who conducted the prosecution were anxious that it should be conducted with the utmost fairness, both as regarded the prisoner and the public, whose interests were deeply involved in the result of the investigation!" A further application was made, as 14*l.* in money, and a receipt for 750*l.* from the Glasgow bank, had been taken from the prisoner, that sufficient funds should be supplied to his attorney to enable him to prepare for the defence, and this request was also promptly granted.

A trial commenced under such humane auspices, was conducted with equal placability to its close. The month's delay, and employment of ample funds, enabled the active agents to procure most important evidence from Glasgow, and a host of medical testimony, the effect of whose combined agencies was so powerful as to compel the Court to stop the case. None can form so correct an estimate of the facts proved, and their illustration by science, as those who actually saw what was going on; and the three able judges who presided seem to have been fully impressed with the conviction that the

prisoner ought not to be considered amenable to punishment for his act, being insensible, at the time he committed it, that he was violating the law of God and man.

The escape of M'Naughton with comparative impunity had not been anticipated, and created a deep feeling in the public mind that there was some unaccountable defect in our criminal laws. People of good sense appeared panic-stricken by this new danger from venturing into the London streets, and called upon the legislature to discover some preservative against the attacks of insane passengers in public thoroughfares. With the impulsive energy of his nation, Sir Valentine Blake moved for leave to bring in a bill to abolish the plea of insanity in cases of murder, except where it could be proved that the person accused was publicly known and reputed to be a maniac, and not afflicted by partial insanity only; and to ask the House to suspend the standing orders to accelerate the progress of the bill. The eagerness of the worthy baronet, that not a day's delay might interpose between the danger and remedy, was baffled by the sad accident of the motion not finding a seconder! On the same night, a very different personage, Lord Brougham, announced his intention of dealing with the law relating to the crimes of persons alleged to be labouring under partial insanity; and Lord Denman declared the matter should be made the subject of a most careful consideration. Lord Campbell remarked "that there might be great difficulty in convicting persons who were not in a state of mind to be responsible for their actions; but it was monstrous to think that society should be exposed to the dreadful dangers to which it was at present subjected from persons in that state of mind going at large."

After the lapse of a few weeks, "cool reflection" came, and the chancellor, Lord Lyndhurst, declared, in his disimpassioned and lucid manner, that there could be no improvement in the law, no change in the legal definition of this most difficult and delicate subject. He admitted, indeed, that the theory of a delusion, directed to one or more persons, and confined to one or two points merely, whilst the unhappy patient might be considered on all other topics, and with reference to all other members of the community, very intel-

ligent and acute, was yet but imperfectly understood. It was clear, beyond doubt or cavil, that no law could be put into execution which enacted the liability of a man to capital punishment for the wrongs he had unknowingly committed. "You would have to repeal the law which you had passed in a moment of excited feeling, in consequence of recent painful impressions, but which you could not have passed under the influence of calm and steady reason."

The test suggested by Alison, in his Treatise on the Scottish Criminal Law, "Had the prisoner reason with respect to the act in question?" was the true one; and the defence of a criminal, reported by him, seemed to be based on the correct principle. A man was indicted for the murder of another by shooting him, whilst going across a moor. He supposed the person whom he had shot to be an evil spirit, whom he was commanded by the Almighty to kill. If the facts necessary to support the plea had been made out, it would have been considered by the Court a substantial defence. It has been argued, that if the prisoner knows when he fires the pistol it will kill a man, that is enough, his guilt and liability to punishment complete, the principle of punishment being to prevent others from committing the same crimes. Archbishop Whately illustrated that position by the example of a dog accustomed to worry sheep. The animal has no moral sense, no ideas of good and evil, but still you punish that dog,—you punish him to correct and prevent him from worrying sheep. The prelate's illustration was pronounced by the Chancellor to be a logical absurdity. "You do not punish the dog for an example to other dogs. The person must in the first instance deserve the punishment. You do not punish persons incapable of committing the crime for which you punish."

Lord Brougham complained that the legal definition, "knowing right from wrong, knowing he sinned against the law of God and nature, knowing the act to be forbidden by the law of his country, was vague and indefinite." "The true test was this,—was he capable of distinguishing right from wrong? that is, right according to the law; wrong, an act condemned and punishable by the law. If the perpe-

trator of the crime knew what he was doing, if he had taken his precautions to accomplish his purpose, if he knew at the time of committing the desperate act that it was forbidden by the law, that was his test of insanity; he cared not what judge gave another symbol, he should go to his grave in the belief that it was the only real, sound, and consistent test."

Lord Cottenham added a judicious caution, that they could not listen to any doctrine which proposed to punish persons labouring under insane delusions. "Was the mind diseased sensible of the disease under which it laboured? He believed not; if it were, there could be no complete delusion. He agreed with Alison in thinking a mad person may be conscious that murder is a crime, but may believe that a particular homicide is in no way blamable, because he may believe that certain persons have entered into conspiracy against him, or that some one person may be his mortal enemy, and that he is justified in cutting him off."

Notwithstanding these slight shades of difference, the Law Lords were unanimously of opinion, without imputing blame to the Court who tried M'Naughton, that, considering the natural excitement which prevailed, it would have been far better to have suffered the trial to take its course to the end. There would not have been the slightest alteration in the issue; there could not have been, when the two physicians who examined the prisoner on behalf of government concurred with their medical brethren in the belief of his insanity. Their silence was as eloquent as words. But the public uneasiness would have been allayed, and the profession would have profited by the Solicitor-General's reading on the law. It was agreed, that the opinion of the judges should be taken upon the mysterious questions discussed at the trial. Accordingly, the Lord Chancellor submitted for their decision the following important queries:—

"1st. What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane

delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit?

"2nd. What are the proper questions to be submitted to the jury, when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

"3rd. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

"4th. If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?

"5th. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?"

To these questions the judges (with the exception of Maule, J., who gave on his own account a more qualified reply) answered as follows:—

To the first question:—"Assuming that your lordship's inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordship to mean the law of the land."

To the second and third questions:—"That the jury ought to be told in all cases that every man is presumed to

be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely if ever leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable, and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

To the fourth question:—"The answer must of course depend on the nature of the delusion; but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts, with respect to which the

delusion exists, were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the last question:—"We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But, where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

The public excitement died away after this clear enunciation of the common law as it affects insane delusions, and no change has been engrafted on its wisdom and humanity. The calm good sense of the nation has tardily, but at length with general assent, recognised the propriety of M'Naughton's acquittal. It is far more just and merciful to take care alike of the accused and of society, by confining in secure custody the doubtfully conscious shedder of blood, than to incur the fearful hazard of putting to death an irresponsible agent. There may be no sufficient reason from the evidence to presume that M'Naughton entertained any false belief of a legal right to destroy his enemies, that the act of killing necessarily resulted from the nature of his delusion. The majority of those monomaniacs who believe themselves the objects of persecution, retain the exercise of their free will so far as neither to kill nor attempt to kill their persecutors. But the frenzied impulse to murder depends on the intensity of the delusion, which may coerce the free will too imperiously to prevent the manslayer from being a wilful murderer, without exculpating him altogether. Where there is so much

doubt and difficulty both as to the degree and quality of consciousness, it is the best and safest, the most discreet and judicious course with respect to criminals, if there be error, to err on the side of mercy, and not to hold that unhappy being responsible with his life for an act of which he may be innocent in the sight of God.

The Solicitor-General stated the case for the prosecution in that calm and colourless manner, that clear and equable style, which is the perfection of oratory in a prosecuting counsel; attaining the effect of eloquence without an apparent effort, yet free from all rhetorical ornaments, informing the minds of the jury, not seeking to sway their passions,—distinct, simple, forcible. He gave a disimpassioned historical narrative of the facts, which left it impossible to suggest a doubt that the prisoner's hand had deprived Mr. Drummond of life; then examined the possible motives that might have led to the commission of the crime; and expounded, in a lucid outline, the law as affecting persons in the morbid state of mind under which M'Naughton might be supposed to suffer. A mild forbearance and merciful consideration, that excluded mere topics of prejudice, and invited a searching but generous scrutiny, pervaded the whole address. There was no laboured display of that commanding intellect before which, said Mr. Cockburn, we all bowed down; but the effect of the tragic tale so told, and the law so explained, could not fail to convince all who listened that the prisoner had wilfully committed the crime of murder. The great artistical ability of the consummate advocate,—the first who, without attaining judicial rank, has been honoured by a statue in Westminster Abbey,—appeared in the manner in which he wound up his statement and evidence with the reading of the prisoner's letters. Such a plain, steady, business-like character prevailed throughout, that soundness and strength of intellect could scarcely fail to be inferred by the common sense of the tradesmen in the jury-box. It is also not unworthy of remark, that Sir William Follett abstained from calling any medical evidence, having

ascertained that their testimony would support the notion of the prisoner's delusion, and acting on the belief that, as he was ably defended, his counsel must bring forward such evidence; that it formed no part of his duty, when conducting the prosecution, to call witnesses in support of the prisoner. He thus simply commenced his address:—

"You are assembled here to-day to discharge a most solemn and important duty. You will have to decide whether the prisoner at the bar be guilty or not guilty of the awful crime with which he stands charged; and I feel, Gentlemen, that I shall best discharge my duty to the Crown and to the public, on whose behalf I appear here to-day, if I proceed at once to state, as calmly and dispassionately as I can, all the facts and circumstances connected with the melancholy case. Mr. Drummond, whose death we are to inquire into this day, was, as you all know probably, the private secretary of Sir R. Peel, and was on terms of friendship and intimacy with him. By virtue of his office, he occupied apartments in the official residence of the prime minister of this country. He was in the constant habit of passing from those rooms to the private residence of Sir R. Peel, in Whitehall Gardens; and it will be proved to you that the prisoner at the bar, for many days before the fatal occurrence took place, was seen loitering about those spots, and watching the persons who went in and out of the public offices and the houses in Whitehall Gardens. This conduct had attracted attention, and he was spoken to by some soldiers, who had observed him, as well as by the police; but, unfortunately, no steps were taken to remove him. On Friday, the 20th of January, Mr. Drummond left his apartments in Downing Street, and went to the Treasury, and thence to the Admiralty, in company with Lord Haddington, whom he left at the Admiralty, and proceeded alone to Drummond's banking-house, at Charing-cross; on his return from which, when near the Salopian Coffee-house, the prisoner at the bar—for there can be no doubt of his identity,—came behind him, and discharged a pistol almost close to him."

After describing the particulars of the transaction, and the death of Mr. Drummond, as afterwards proved in evidence,

Sir William Follett continued: "Gentlemen, his death is deeply, and I may say permanently, regretted; for he was beloved, esteemed, and valued by all who knew him. He was of a disposition so amiable, that it was impossible he could have had any personal enemies. You will naturally ask then, Gentlemen, who was the prisoner at the bar, and what could induce him to deprive of life a being so unoffending? Mr. Drummond was not only without any personal enemies, but he did not fill any prominent situation before the public. He did not hold that situation in public life which would render him obnoxious to political enemies, but he was the private secretary of the principal minister of the Crown, often an inmate of his house, and constantly passing therefrom to the public offices in Downing Street and the neighbourhood, about which the prisoner was observed to be loitering and watching. You will be satisfied, from the facts of the case, from the threats used by the prisoner before he committed his crime, and his declarations afterwards, that it was not the life of Mr. Drummond that he sought. You will be satisfied that it was the life of Sir Robert Peel that he desired to take, and that it was his life that he believed he was destroying when he discharged the fatal pistol against the person of Mr. Drummond. Gentlemen, the nature of his crime is not altered by this circumstance, but it affords a reason for it. I need not tell you that he is guilty of murder, although he might have mistaken the person against whom he discharged the pistol. Of the guilt of the prisoner — of the fact of his having deprived Mr. Drummond of life — it is impossible I can suggest a doubt; it is impossible that any doubt can be suggested that the crime was committed, and that that crime was murder. But I cannot conceal from you, because I know, from applications which have been made to this Court, and the depositions which have been made on behalf of the prisoner, that it is intended to rest the defence on the plea that he was insane at the time he committed the crime; and, Gentlemen, it will be your painful duty— for painful it must be — to decide whether he was in that degree of insanity at the time he committed that crime, which would render him not a responsible agent, and not answerable to the laws of his

country for the offence of which he has been guilty. This defence is a difficult one at all times; for while, on the one hand, every one must be anxious that an unconscious being should not suffer, yet, on the other hand, the public safety requires that this defence should not be too readily listened to; and, above all, the public safety requires that the atrocious nature of the act itself, and the circumstances under which it was committed, should not form any ingredient in that defence. There are few crimes that are committed, and above all, crimes of an atrocious nature like this, that are not committed by persons labouring under some morbid affection of the mind; and it is difficult for well-regulated minds to understand the motives which lead to such offences in the absence of that morbid affection of the mind. I believe that the truth of this remark will be more especially proved when attacks are directed to persons holding high and important stations in the nation. If you look back upon the page of history, and consider the facts connected with the death of persons whose lives have been destroyed by the hands of assassins, you will be satisfied in one moment of the truth of that proposition. But we need not look far back; occurrences of our own times furnish us with sufficient instances for illustration. If you look at a neighbouring country, you will see there that persons in broad day, in the crowded streets of the metropolis of France, without any precaution for their own safety, without any attempt to escape, in the midst of the people, close to the armed guards of the king, have discharged their weapons at the person of the sovereign of the country. What motive had they? We know of none but that of an ill-regulated mind, worked upon by morbid political feeling. We have seen other instances in France, of parties, having laid no plans to assist themselves in their escape, discharging infernal instruments in the streets of Paris, regardless of how many and what lives they destroyed, provided they could reach the person of the sovereign. I refer to these things, Gentlemen, to show that the circumstances attendant upon the crime itself afford no grounds for holding that the parties committing it are not responsible to the laws of their country. But I know that in this case the

defence on the part of the prisoner will not rest upon this, but that evidence will be offered to show that the prisoner was not in a sane state of mind at the time he committed the crime; and knowing that, I feel that I ought, in this stage of the case, to refer to some authorities, and state my view of the principles of the English law. It will be open to my learned friend, whose powerful assistance I am happy to see the prisoner will have, to comment upon that, and to differ from me if he thinks I am wrong. It has been the custom in these cases to refer to proceedings of authority, and to the dicta of judges who have tried similar questions: not that I mean to say for one moment that it is a question of law; on the contrary, the question to be decided by you is a question of fact, a question of common sense and belief. The whole question will turn upon this: — if you believe the prisoner at the bar at the time he committed this act was not a responsible agent — if you believe that when he fired the pistol he was incapable of distinguishing between right and wrong — if you believe that he was under the influence and control of some disease of the mind which prevented him from being conscious that he was committing a crime — if you believe that he did not know he was violating the law both of God and man, then, undoubtedly, he is entitled to your acquittal. But it is my duty, subject to the correction of my lord and to the observations of my learned friend, to tell you that nothing short of that will excuse him upon the principle of the English law. To excuse him, it will not be sufficient that he laboured under partial insanity upon some subjects — that he had a morbid delusion of mind upon some subjects, which could not exist in a wholly sane person; that is not enough, if he had that degree of intellect which enabled him to know and distinguish between right and wrong, if he knew what would be the effects of his crime, and consciously committed it, and if with that consciousness he wilfully committed it. I shall be able to show you, Gentlemen, with regard to the authorities upon this point, that observations have been made to the effect that they have attempted to define the law too strictly. But such observations were made without regard to the object of those authorities. It

is impossible beforehand to lay down any definition of the kind of madness which will excuse the crime of murder; the disease assumes such different forms and such various shapes, and acts in such opposite ways, that you cannot define it. But you may lay down the principles of law which are applicable to it; and they are laid down, and uniformly laid down in the same way, that it is a question for the jury to take into their consideration, whether the party was a responsible agent when he committed the crime, whether he then knew right from wrong, whether he was conscious that he was offending against the law of his country and nature, and whether he did it wilfully. Gentlemen, the public safety is the object of all law; the public safety is intrusted solely to the protection of courts of criminal judicature, and to juries who administer justice under the law; and it is with a view to the public safety that the law is laid down by legal authorities principally for the guidance of juries who have to decide upon questions of this nature."

The Solicitor-General then cited Lord Hale's memorable remarks on partial insanity, which seem likely soon to share the fate of his reading on witchcraft, and continued: — "This, Gentlemen, I believe to be a correct principle of the law. But I may perhaps be permitted to refer, not to the authority of any judge upon the subject, but to a statement by a learned counsel for the Crown in one of the important cases in which this question has arisen, — namely, in the trial of Earl Ferrers, before the House of Lords, for the murder of his steward, Mr. Johnson. Lord Ferrers had shown symptons of insanity in a previous part of his life, and his friends had been considering the propriety of taking out a commission of lunacy against him. He had quarrelled with his wife, who was separated from him; and he conceived that his steward took part with her, and called him into his library, where he made him kneel down, upon which he produced a pistol and shot him. He was tried at the bar of the House of Lords, found guilty, and executed. The defence set up was insanity; and in the course of the proceedings, after the speech of the counsel for the defence, the Solicitor-General of that day, (who afterwards filled the

office of Lord Chancellor, and who was deputed, I believe, by the law officers of the Crown to conduct the case in the House of Lords), after referring to the doctrine as laid down by Lord Hale, said, 'My Lords, the result of the whole reasoning of this wise judge and great lawyer (so far as it is immediately relative to the present purpose) stands thus: — If there be a total permanent want of reason, it will acquit the prisoner; if there be a total temporary want of it when the offence was committed, it will acquit the prisoner; but if there be only a partial degree of insanity mixed with a partial degree of reason — not a full and complete use of reason, but (as Lord Hale carefully and emphatically expresses himself) a competent use of it sufficient to have restrained those passions which produced crime — if there be thought and design, a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place. My Lords, the question therefore must be asked, is the noble prisoner at the bar to be acquitted from the guilt of murder on account of insanity? It is not pretended to be a constant general insanity. Was he under the power of it at the time of the offence committed? Could he, did he, at that time, distinguish between good and evil?' Gentlemen, I believe that also to be a correct explanation of the principles of the English law as applicable to such cases."

After citing "Russell on Crimes" to the same effect, the counsel proceeded shortly to notice the cases of Arnold, Bowler, and Hadfield.

"The first was tried at Kingston, before Mr. Justice Tracy, for maliciously shooting at Lord Onslow. It appeared clearly that the prisoner was to a certain extent deranged, and that he had greatly misconceived the conduct of Lord Onslow; but it also appeared that he had formed a regular design, and prepared the proper means of carrying it into effect. Mr. Justice Tracy left the case to the jury, observing, 'that when a person has committed a great offence, the exemption of insanity must be clearly made out before it is allowed; that it is not every kind of idle and frantic humour of a man,

or something unaccountable in his actions, which will show him to be such a madman as is to be exempted from punishment; but that when a man is totally deprived of his understanding and memory, and does not know what he is doing any more than an infant, a brute, or a wild beast, he will properly be exempted from justice or the punishment of the law.' There is, Gentlemen, a more recent case—that of Thomas Bowler,—upon which there is a note in 'Collinson on Lunacy,' p. 673. Bowler was tried at the Old Bailey on the 2d of July, 1812, for wilfully and maliciously discharging a blunderbuss, loaded with bullets, at William Burrows, and wounding him with the contents in the neck and back, under circumstances, as they were disclosed in the evidence, which manifested considerable ill-will towards the prosecutor, and design in the execution of his purpose. The defence set up was, insanity occasioned by epilepsy. Elizabeth Haden, the housekeeper of the prisoner, deposed that he was seized with an epileptic fit on the 9th of July, 1811, and was brought home apparently lifeless, since which time she had perceived a great alteration in his conduct and demeanour. He would frequently dine at nine o'clock in the morning, eat his meat almost raw, and lie on the grass exposed to rain. His spirits were so dejected that it was necessary to watch him, lest he should destroy himself. Mr. Warburton, the keeper of a lunatic asylum, deposed that it was characteristic of insanity occasioned by epilepsy, for the patient to imbibe violent antipathies against particular individuals, even dearest friends, and a desire of taking vengeance upon them, from causes wholly imaginary, which no persuasion would remove, and yet the patient might be rational and collected upon every other subject. He had no doubt of the insanity of the prisoner, and said he could not be deceived by the assumed appearances. A commission of lunacy was produced, dated June 17, 1812, and an inquisition taken upon it, whereby the prisoner was found insane, and to have been so from the 30th of March then last. Sir Simon Le Blanc, before whom the trial took place, after summing up the evidence, concluded by observing to the jury, 'that it was for them to determine whether the prisoner, when he committed the

offence for which he stood charged, was or was not incapable of distinguishing right from wrong, or under the influence of any illusion in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct. On the other hand, provided they should be of opinion that when he committed the offence he was capable of distinguishing right from wrong, and not under the influence of such an illusion as disabled him from discerning that he was doing a wrong act, he would be amenable to the justice of his country, and guilty in the eye of the law.' The jury, after considerable deliberation, pronounced the prisoner Guilty. Gentlemen, I find that these principles are laid down by the judges; I do not know that they can be refuted by my learned friend on the other side; but the question is, whether, under all the circumstances, they must be applicable to the particular case under consideration? There is, certainly, one other case to which I should refer. It is not the authority of a judge; but it is one of the most celebrated cases of the kind—I allude to the trial of Hadfield, on a charge of high treason, for firing at King George III. He was defended by Lord Erskine, who made one of the most eloquent and able speeches, probably, that was ever delivered at the bar; and he entered at that time much into the law of insanity, and the nature of the insanity that would excuse the prisoner. In that case, I believe, no doubt could be entertained of the insanity of the prisoner, and the Court, upon that ground, stopped the trial. But in the course of that trial Lord Erskine said, 'The prisoner must be shown to labour under some delusion, and it must also be shown that he committed the act in consequence of that delusion.' That was the ground upon which Lord Erskine put the defence. But, as was remarked by the present Lord Chief Justice of the Court of Queen's Bench, the counsel for the prisoner would only state so much of the law as was applicable to the defence of the prisoner; and I cannot help thinking that there may be many cases in which the prisoner may be excused from the consequences of a crime that would not fall under the description of Lord Erskine.

A party may have that state of mind which would render him wholly unconscious of right and wrong; he may have that state of mind which makes him not aware that he is committing a crime, and yet the crime may not be the offspring of any delusion he labours under; nor do I think it is right in another point of view. I think that parties may be liable to be punished under the law although they did labour under a delusion, and although the act may have been committed under that delusion. I think, therefore, the doctrine of Lord Erskine is not true in either way to its fullest extent. I will put one case, that which Lord Erskine refers to in that celebrated speech. He speaks of two brothers — one of whom laboured under the morbid delusion that the other was his enemy, and conspiring against him; and in consequence of that delusion he made a will, in which he disinherited that brother. The question arose as to whether that will could be set aside; and it was held that the will was made under circumstances which rendered it invalid. Now I cannot help thinking that, upon the principles of the English laws, if that brother was aware of the consequences of what he did — if he knew the difference between right and wrong — and with that knowledge and consciousness had deprived his brother of life, he would have been guilty of murder. I own that in that case the ground laid down does not appear satisfactory either in favour of or against the principle."

After glancing at the case of Bellingham, the counsel mentioned a trial before Lord Lyndhurst, in which he supported the judgment of C. J. Mansfield. "In the case of R. *v.* Offord, the prisoner was indicted for the murder of a person named Chisnall, by shooting him with a gun. The defence was insanity. It appeared that the prisoner laboured under a notion that the inhabitants of Hadleigh, and particularly Chisnall, the deceased, were continually issuing warrants against him with intent to deprive him of his liberty and life; that he would frequently, under the same notion, abuse persons whom he met in the street, and with whom he never had any dealings or acquaintance of any kind. In his waistcoat pocket a paper was found, headed, 'List of Hadleigh conspirators against my life.' It contained forty

or fifty names, and among them 'Chisnall and his family.' There was also found among his papers an old summons about a rate, at the foot of which he had written, 'This is the beginning of an attempt against my life.' Several medical witnesses deposed to their belief that, from the evidence they had heard, the prisoner laboured under that species of insanity which is called 'monomania,' and that he committed the act while under the influence of that disorder, and might not be aware that in firing the gun his act involved the crime of murder. The observations of Lord Lyndhurst, who tried the cause, appear to have been in perfect unison with the law as laid down by former judges, especially Lord Mansfield. Lord Lyndhurst, in summing up, told the jury, that 'they must be satisfied, before they could acquit the prisoner on the ground of insanity, that he did not know, when he committed the act, what the effect of it, if fatal, would be, with reference to the crime of murder. The question was, did he know that he was committing an offence against the laws of God and nature?' His lordship then referred to the doctrine laid down in Bellingham's case by Sir James Mansfield, and expressed his complete accordance in the observations of that learned judge, and, as I conceive, in accordance with the correct principles of law. I have referred to these authorities for the purpose of enabling you, Gentlemen of the jury, to judge of the evidence which will beyond doubt be produced on behalf of the prisoner, that you may compare the circumstances, and consider whether the prisoner at the bar was in that state of mind which rendered him not responsible for the crime he committed. But, knowing the nature and object of that evidence, I think I should not discharge my duty to the public or to the Crown, if I did not lay before you on my part what is known respecting the history of the prisoner, and what is known of his conduct directly before his apprehension. It is right I should tell you, at least, that I do not mean to go into any observations which persons may have particularly directed to the state of mind of individuals in similar circumstances, but to show in what way the prisoner has conducted himself in his past life, the way in which he managed his business, the mode and manner of his

living, what care he took of himself, and how he was left by all his connections to manage his own affairs, and continued to do so down to the very hour of his defence."

The Solicitor-General then traced the prisoner from Glasgow to London, commented on his habits of thrift, and concluded with reading the remarkable correspondence with the Bank and *Spectator* newspaper, in which his caution and shrewdness are so fully displayed. "On the 23rd May, desiring to transfer his account to the Glasgow Bank again, he wrote this letter:

"'Glasgow, May 23rd, 1842.

"'Sir,—I hereby intimate to you that I will require the money, ten days from this date, which I deposited in the London Joint Stock Bank, through you. The account is for 745*l.*: the account is dated August 28th, 1841, but is not numbered. As it would put me to some inconvenience to give personal intimation, and then remain in London till the eleven days' notice agreed upon had expired, I trust this will be considered sufficient.

"'Yours, &c.,

"'DANIEL M'NAUGHTON.'

"Well, upon that, Gentlemen, the account was transferred to the Bank of Glasgow, and he received a deposit receipt from the Bank there for the larger sum, specified in the deposit receipt found upon him at the time of his apprehension. Another letter was written by him in July, 1842, which will be read to you, as it will be proved that he went to the shop of a gunsmith in the neighbourhood of Glasgow, where he bought the pistols, and bargained with the man for them, expressing a wish to have them of the same size, and desiring the man, if he had not them himself, to get them for him. In that month he bought the pistols, and in that month he came to London, and again in September following. But on the 19th of July he wrote the letter relating to his entering into some business or partnership in London, in consequence of an advertisement published in a London newspaper—the *Spectator*—of the 16th of that month, as follows:

"'OPTIONAL PARTNERSHIP.—Any gentleman having 1000*l.* may invest them, on the most advantageous terms, in a very genteel business in London, attended with no risk, with the option, within

a given period, of becoming a partner, and of ultimately succeeding to the whole business. In the meantime, security and liberal interest will be given for the money. Apply by letter to 'B. B.,' Mr. Hilton's, bookseller, Penton Street, Pentonville.'

"On the 21st of July the advertiser received from the prisoner the following letter: —

"'Glasgow, 19th July, 1842.

"'Sir, — My attention has been attracted to your advertisement in the *Spectator* newspaper, and as I am unemployed at present, and very anxious to obtain some, I have been induced to write, requesting you to state some particulars regarding the nature of the business in which you are engaged. If immediate employment can be given or otherwise, what sort of security will be given for the money, and how much interest? I may mention that I have been engaged in business on my own account for a few years, am under 30 years of age, and of very active and sober habits.

"'The capital which I possess has been acquired by the most vigilant industry, but unfortunately does not amount to the exact sum specified in your advertisement. If nothing less will do, I will be sorry for it, but cannot help it; if otherwise, have the goodness to write to me at your earliest convenience, and address 'D. M. N.,' 90, Clyde-street, Anderton's frontland, top flat.'

"He then came to London in that same month, and I shall call before you some of his friends and acquaintances who had known him in Glasgow, and who met with him and had various conversations with him, and with whom he walked by the house of Sir Robert Peel; particularly, evidence will be given with regard to a conversation with the prisoner in the month of November, 1842. He remained in London from that time down to the period when he committed the offence, in the month of January, and still lodged in Mrs. Dutton's house. Other persons at that time were acquainted with the prisoner; these persons I will put into the witness-box — persons conversant with his manners and habits, as well as his landlady, in order that you may form an opinion whether or not the prisoner was a responsible agent at the time he committed the offence. On the other side, no doubt, evidence will be offered to prove his insanity; and certainly it is some consolation to me, in the discharge of a painful

duty, to know that the interests of the prisoner will be most ably and powerfully attended to; but it will be your duty, and no doubt your desire also, to listen most attentively to the evidence on both sides, and to weigh the one against the other. What the precise nature or the details of the evidence on the part of the prisoner may be, I cannot say. I know not the exact nature of it, nor its extent; but when it is adduced, you will say, upon that evidence, are you or are you not satisfied that the prisoner was, at the time he committed this crime, a responsible agent, that he did know right from wrong, and that he was aware of the consequences of the act which he committed? If you think he was not, he ought to be acquitted. If that should be the result of the evidence, he will be entitled to your acquittal. But if it fall short of that, if you think he was a responsible agent, I need not say to you that public justice requires a different verdict. It is a painful duty, Gentlemen, but it is a duty which must be faithfully discharged; and I am perfectly satisfied that when you have heard the witnesses, when you have maturely deliberated upon and considered the evidence, your verdict will be one of justice between the public and the prisoner."

James Silver, a police constable on duty at Charing Cross, heard a report of a pistol on the opposite side of the street. "I looked over, and saw a gentleman stagger with his hand pressed against the left side of his back. I also saw the prisoner returning a pistol with his right hand into the left side of his breast. He was behind the gentleman. When I saw him put the pistol into his bosom, I perceived that he drew another pistol from his right breast with his left hand, and change it into his right hand. I ran across the street and seized his right arm and tripped his feet from under him. He struggled very violently, and the pistol went off upon the pavement. When I seized him, he tried to raise his right arm and turn upon me; but I secured him, so that he could not. I then took the pistol from his right hand and also the other from his left breast. On the way to the station-house he said either 'he' or 'she (I cannot recollect which) shall not break my peace of mind any longer.'"

Another witness saw the prisoner about three paces be-

hind Mr. Drummond immediately on the report. "He was drawing a second pistol from his breast very deliberately, but quickly. He then placed the barrel of his pistol in his left hand, and cocked it. I then observed that the gentleman was reeling, and the prisoner was pointing the pistol at him. At that moment the witness Silver ran up and sprung upon him, seizing him by the arms. A scuffle then took place, and, in the scuffle, the second pistol was discharged."

The prisoner was then seized and taken to the police station-house in Gardner's Lane, where he was searched, and there were found on his person two five-pound notes, four sovereigns, and a deposit receipt for 745*l.* from the Glasgow Bank. Among some other trifling articles that they took in his pockets, were ten copper percussion caps, which fitted the nipples of the pistols he had discharged; and afterwards, upon searching his lodgings, bullets were also found to match the barrels of those very pistols.

Mr. Drummond, after the pistol which wounded him was fired, staggered from the effect of the shot, but did not fall. He walked almost without assistance back to the banking-house. A medical gentleman in the neighbourhood was sent for, and, after a short time, Mr. Drummond was removed in his own carriage to his private residence. For some time hopes were entertained of his recovery, and that the wound would not prove fatal; but, unfortunately, those hopes were abortive. He lingered in great pain for some days, and died on Wednesday, the 25th January.

The proof was equally clear that the life of this estimable gentleman was taken deliberately but erroneously by a mistake of identity for Sir Robert Peel, to whom he bore in figure a strong resemblance. For a fortnight before the prisoner had been seen loitering and watching near the Foreign Office, the Treasury, and Whitehall Gardens; one of the police having frequently noticed him in the neighbourhood. "On the 13th I spoke to him, and asked him whether he was waiting for any body, when he replied, that he was waiting for a gentleman, and immediately walked away in the direction of the Horse Guards. On the 20th I again spoke to him, about ten o'clock in the morning. He was then standing on the last step leading to the Council

Office, where he remained for about twenty minutes. I then asked him whether he had seen the gentleman he had previously told me he was waiting for? He quickly replied 'No,' and instantly walked away. He did not appear inclined to answer any questions."

A recruiting serjeant meeting him near the gates of the Horse Guards, said, "Oh! what here again! Is there any particular regiment you wish to join?" But his reply was, "I don't wish to enter the service; I am only waiting to see a gentleman."

A serjeant in the 2nd Dragoon Guards observed him several times pass through Whitehall Gardens opposite Sir R. Peel's, and round by the chapel, and asked him two or three times to enlist; but he said he had no intention to join the army; he was merely waiting to see a gentleman. Another constable, not approving of these loiterings about, remonstrated with him on Wednesday, 18th January. I said to him, "Some of the gentlemen inside have been speaking to me about your standing on the steps." He said, "Tell them it is a notion I have taken." I said, "If you are waiting for any one, you had better wait upon the pavement, as they don't appear to like your standing on these steps unless they knew your business." He said, "You can tell them their property is quite safe." To get rid of his importunity, the prisoner twice offered to treat this officer with liquor. The very day of the murder, only an hour before its commission, the office keeper at the Board of Trade again observing the prisoner standing on the Council Office steps, said, "You'll excuse my taking the liberty, Sir, but I belong to the office next door. You are a police officer, are you not? To which he replied 'Yes;' and I said, 'I suppose then it is all right.'"

The prisoner had thus been for a fortnight watching about the public offices, and, from his declarations after the arrest, and his statement, there can be no rational doubt that the intended victim was Sir Robert Peel.

Tierney, an inspector of the A division of police, proved this very clearly at his second interview with him on the evening of the murder. "I cautioned him in the same

manner as on other occasions, when he said I acted fairly towards him, and that fair play was the English character. I then asked him where he came from, and he replied from Glasgow. He said that he had left Glasgow about three months; that he stayed at Liverpool seven days, and then came to London, where he had remained ever since; he then said that he was in business at Glasgow as a turner, but left that and was going into another business, but was prevented. I observed that he had a good share of money, to which he replied that he had wrought hard for it, and that he generally did the work of three ordinary men daily. I told him I had been in Glasgow three or four weeks before. He then asked the name of the ship I went in. I said I had forgotten, but thought it was the British Queen. He said I must have been mistaken, it must have been the Princess Royal, and I then recollected that was the name of the vessel. I then asked him whether he knew Mr. Richardson, the superintendent of the Gorbals police? He said he did, and added that he was considered a more clever man than Miller (another police officer). I then asked him whether he came over in the Princess Royal? He said he did not; he came over in the Fire King. I asked him whether there was a railway from Edinburgh to Glasgow? He told me there was, and, as far as I recollect, said they were thirty or forty miles apart. He also mentioned the fares, and I think he said the fare was six shillings in the second-class carriage. I told him that when I was going to Glasgow, I went on shore at Grenock, and thence by rail to Glasgow; that I went through Paisley, and described the situation of the town to him, and then asked him whether he had ever been there? He said he had. I remarked that it was a great place for shawls. He admitted that it was; that nearly all the inhabitants were weavers, but he was sorry to say there were a great many of them out of employ. I then asked him whether he would take any refreshment, when he expressed a wish to have some coffee, with which he was supplied. In the course of conversation, I asked him whether Drummond was a Scotch name? He answered that it was; that it was the family name of the Earl of Perth, but the title had

become extinct. I do not recollect that any thing further took place that night. On the following morning I again saw the prisoner, between eight and nine o'clock. On entering his cell, I asked him whether he had had his breakfast? He replied in the affirmative, and asked to have some water to wash himself with. I then sent the constable, who had been sitting up with him, for some water, and when he had left the cell, I said to the prisoner—'I suppose you will assign some reason to the magistrate this morning for the crime you have committed?' He said, 'I shall give a reason —a short one.' I then said, 'You might have stated any thing you thought proper to me last night, after the caution I gave you.' He then told me that he was an object of persecution by the Tories, that they followed him from place to place with their persecution. He seemed inclined to go on with his statement, when I said, 'I suppose you are aware who the gentleman is you shot at?' He said, 'It is Sir Robert Peel, is it not?' I at first said 'No,' but in a moment recollecting myself, said, 'We don't exactly know who the gentleman is yet.' Then turning round, I said, 'Recollect the caution I gave you last night, not to say any thing to criminate yourself, as it may be used in evidence against you;' to which he immediately replied, 'But you won't use this against me?' I said, 'I make you no promise; I gave you the caution.' I then left the cell, and in the course of the same day took him to the police-court, Bow-street."

As this conversation was very important, betraying a political motive for the crime, and as Tierney had evinced some appearance of deceit, he was cross-examined with asperity by Mr. Cockburn.

"Is it your duty to put questions to the prisoners?—As long as I do not interfere with the case in point, I do not see any harm in putting questions to prisoners.

Did any one direct you to put such questions?—Certainly not.

What was your object in putting them?—I wanted to get all the information I could about his former life.

In order to give it in evidence against him?—I never in-

tended to give in evidence against him any thing he told me till he mentioned the name of Sir Robert Peel.

What was your motive for wishing to get information respecting his former life?—Nothing that I know of but the anxiety of human nature, under such revolting circumstances, to know who and what he was.

Now, do you mean to swear that you ever intended to suppress the evidence you have given?—Not to suppress it, but I had no intention to mention it till he mentioned the name of Sir Robert Peel. I cannot give you the precise conversation which took place at each interview, but I have stated the substance of them all. A constable, of the name of Edwards, was present when the conversation took place, but he is not here to-day. As I did not intend to mention the conversations, I did not make any notes of them, but I did make a memorandum of the conversation in which Sir Robert Peel's name was mentioned.

Why did you not have the morning conversation in the presence of the constable?—I wish he had been present. I had no motive for the conversation taking place in his absence. I first mentioned the conversation at Bow Street.

Do you mean to swear that you had no motive lurking in your mind when you asked him whether he intended to make any statement before the magistrate?—I had no particular motive, but I imagined the responsibility was off my shoulders after the caution I gave him on the previous night.

Was not the object of that interview to induce him to make that statement?—I did it for the purpose of letting him know that I was ready to receive any communication he thought proper to make.

Now, perhaps, you will tell me upon your solemn oath, whether, when you made that observation to him, you did not do so with the intention of extorting a confession from him?—The remark was thoughtlessly made. I wanted to turn the conversation, as I thought he was going to make a full confession, and I did not wish to hear it."

The prisoner's signature to his statement at Bow Street, a continuance of the former insane delusion, was then proved, and the remarkable document read.

"The Tories in my native city have compelled me to do this. They follow and persecute me wherever I go, and have entirely destroyed my peace of mind. They followed me to France, into Scotland, and all over England; in fact, they follow me wherever I go. I cannot get no rest for them night or day. I cannot sleep at night in consequence of the course they pursue towards me. I believe they have driven me into a consumption. I am sure I shall never be the man I formerly was. I used to have good health and strength, but I have not now. They have accused me of crimes of which I am not guilty; they do every thing in their power to harass and persecute me; in fact, they wish to murder me. It can be proved by evidence. That's all I have to say."

The landlady with whom the prisoner lodged, at Poplar Row, Newington, was then called to attest his regular, sober, and sensible habits. "He came to me first last July twelve months, and remained with me for three months; he generally went out between eight and nine in the morning, and sometimes later; sometimes he went out without having his breakfast; he returned home generally about eight or nine in the evening. I used to wash for him, and he always paid me punctually for it, and also my rent. When he left his lodgings he was absent about a fortnight or three weeks, and I think he said he had been to France. I never thought him unsettled in his mind. He came back, and then remained with me about three weeks, when he again quitted until the September following, when he returned. In the beginning of December he was poorly, but I never did any thing for him in the house; he asked me to get him a little barley-water, which I did; he had no medical man to attend him. He said he was suffering under a bad cold from neglect; he continued ill about a fortnight. I never had any conversation with him whatever about his friends. I recollect seeing the prisoner on the morning of the day Mr. Drummond was shot; I asked him if he had got the brushes for his boots, and he said he had. I gave him the clothes brush, but he did not use it. I saw him again on that day, about a quarter to ten o'clock, when he went out.

I did not observe, on that morning, any thing about his manner. When he came back to me in September last, he said he had been to Scotland. I asked him if he had seen the Queen when she visited there, and he said he had not, for he was not in that part. I asked him if he thought the Queen's visit had done trade good, and he said he thought it had. He was always very regular in his habits. I never knew him to stay out."

The cross-examination by Mr. Clarkson merely elicited further *traits* of habitual closeness and reserve. "He appeared to me to be a man of very sober habits. He was very retiring in his manners. He avoided conversation with people. When I have spoken to him he never appeared to wish to join in a conversation. I never saw any companion with him. On the morning Mr. Drummond was shot, he went out and returned; he ran up-stairs, and then went out again. When he was ill, I observed that his head appeared to be bad, and that he had much fever. When I spoke to him about the Queen's visit to Scotland, he seemed to wish to avoid my questions. He was not in the habit of looking people in the face, but always hung his head down. He spoke quickly. His habits appeared to me to be very penurious; he had but one change of linen, and one change of socks. I had no idea whatever that he was possessed of such a large sum of money as 700*l*. No person ever called upon the prisoner while he lodged at my house. Whenever he came home at night he went to bed immediately. He never had a fire in his bed-room. He had no sitting-room. I always considered the prisoner very sullen and reserved. There were five other lodgers in my house. I sleep in the room adjoining the prisoner's room. I have heard him get out of his bed at night, and I have heard him moan repeatedly, but it did not attract my attention, as I had observed nothing peculiar about him. I never heard him pacing the room of a night, but I have known him get out of bed, and smoke a pipe. I thought the prisoner was a person out of a situation with very small means. I attributed his sullenness to his difficulty in obtaining a situation. He had no books lying about his room. I gave him one religious

book—'Extracts from the Bible.' I gave it him because he asked me for it. His habits were just the same on Sunday as on other days."

An old acquaintance of the prisoner's at Glasgow, John Gordon, mentioned his meeting with M'Naughton in St. Martin's Lane the November previous, and then walking together past Sir Robert Peel's house to Westminster. "I showed him where Sir Robert Peel lived. He said, 'D——n him, sink him,' or something like that. When we passed the Treasury, he said, 'Look across the street; there is where all the treasure and worth of the world is.' He pointed to the Abbey and said, 'You see how time has affected that massive building.' He wanted work at a turner's shop, and said, 'The London turners are a century behind in their work.' They remained and drank together two hours and more. I did not have any idea," said Gordon, "that his mind was disordered."

Mr. Ambrose, a Writer to the Signet, was in the habit of seeing the prisoner at the Glasgow Mechanics' Institute in 1840 and 1841. "He was in the habit of attending the lectures and classes there. He attended the anatomy class on one occasion; I was in the habit of seeing him; I knew him quite well. An attempt was made to get the rules of this institution altered, in which he took part. He joined with those who took the most prominent part in getting up a memorial for that purpose. He signed it, as I did also. This is the memorial. [*Witness produced the document, but it was not read.*] His name is the fifth. I partly prepared the memorial myself. After the memorial was sent in, a meeting of the members took place upon the subject, and the prisoner seconded the last resolution, which was for the appointment of a committee to take the subject of the proposed alteration into consideration. The prisoner was appointed one of that committee. I was in the habit of seeing him a good deal at this time. I did not observe any thing about him to induce me to think that he was not in his right senses. He did not take any part in the lectures. He was one of the audience. He was in the habit of getting books from the library from time to time. I saw him at his place of business in the

autumn of 1841. I asked him whether he was still a member of the Mechanics' Institution. He said he was not. I had conversation with him of only a few minutes' duration in his place of work. I don't recollect seeing him after that. I did not observe any alteration in him."

Mr. Swansted, the curator of the Museum, attested his studious and regular habits. "He spoke 'tolerably fair,' and made as respectable an appearance and spoke as sensibly as the rest. I never observed any thing remarkable in his conversation and manner. When he returned to the institution in 1842 he was better dressed and cleaner than he used to be before. I frequently had conversations with him. He had thirty-five volumes entered in his name in the summer of 1842. He wished to have a book renewed, and I demanded the payment of a penny for the renewal; he demurred to pay it. I have seen him in company with a person named Nockold, who was a member of a Socialists' society, and shake hands with him. I had occasionally some conversation with the prisoner about politics. He used to express himself warmly, but I cannot tell his expressions. The impression on my mind was ——"

Mr. Cockburn. I object to the witness detailing his impressions or surmises. He should define the words and conduct of the prisoner which gave rise to those impressions.

Lord Chief Justice Tindal. He may state, generally, what his opinion was of the conduct and appearance of the prisoner.

"He used to speak in favour of the suffrage, but never defined any thing particularly; he never said how the extension was to be effected."

Cross-examined by Mr. Clarkson. When I asked him for the penny, which was for the book he borrowed from the library, he stared, and gave me a look with his eyes which made them look more staring and glazed like than before.

Dr. Douglas confirmed this statement. "I am a surgeon, residing at Glasgow, and am in the habit of giving lectures on anatomy. I recognise the prisoner as having been a student of mine last summer. I had opportunities of speaking to him almost every day. I merely spoke to him on the subject of anatomy, and he spoke to me on the same subject.

He seemed to understand it. I scarcely had any opportunity of judging of his knowledge, because he did not attend the examinations. He attended in the dissecting-room an hour a-day. He used to be reading there. I used to examine the students every Saturday. The prisoner did not attend then. The attendance was not compulsory — some pupils attended, and some did not. I had some talk with him frequently. He appeared to understand what he was about. I never observed anything to lead me to suppose his mind was disordered. I am in the habit of explaining in a familiar manner to the students the different parts of the body, independently of the lectures; I did so to M'Naughton as well as others. The lectures were five days in the week. I gave him a certificate of his having attended my lectures. I had not seen him until he was in custody, since the last day of July. When I saw him in custody he knew me. I expressed my surprise at seeing him there. He made some monosyllable reply, but I could not tell what. I observed nothing particular about him, except his being a man of little education. There was a want of polish about him. I think he was capable of understanding what was said to him."

Mr. Cockburn. Now, Sir, do you mean to say you had an opportunity of forming a judgment as to the man's sanity or insanity?

Witness. No; I merely came to say that he appeared to understand what he heard of my lectures.

Joseph Forrester, a hair-dresser, who had known the prisoner for the last eighteen months, never suspected his sanity. "We just used to talk together, but upon no particular subject beyond the mere occurrence of the day. When I went to see him I often found him reading. I never saw any thing in his manner which led me to think he was not in his right senses, or that he was wrong in his intellect. I used to stay with him sometimes half an hour, sometimes two hours."

The letters which the Solicitor-General had read in his opening address were again read by the officer of the court, and the case on behalf of the Crown closed.

Mr. Cockburn applied to the Court to be allowed till the

next morning before he entered upon the defence. He was himself labouring under very severe indisposition; and from the length to which the evidence on behalf of the prisoner would run, it would be impossible to close the proceedings that night.

Chief Justice Tindal inquired whether, if they adjourned at once, it was quite certain the remainder of the case would come within the compass of to-morrow.

Mr. Cockburn replied, that he hoped it would; but that would depend mainly upon the course pursued by the counsel for the Crown.

Chief Justice Tindal said, if there was a probability of its being concluded to-morrow, the Court would at once accede to the learned counsel's request.

Mr. Cockburn said, that rather than make any statement which might mislead the Court, he would go on till a late hour to-night.

After a short consultation between the learned Judges,

Lord Chief Justice Tindal said, that, whatever might be the consequences, the Court would at once adjourn the proceedings; as the learned counsel had intimated that he did not feel he could, in his present state, do justice to the prisoner.

Mr. Cockburn assured the Court, that he not only spoke with great pain, but he felt that, if he proceeded, he should not be able to address the jury at the length the importance of the case required.

The sheriff's summoning officer, Mr. Hemp, and two of the ushers of the court, were then, by direction of the Court, sworn in the usual form to take charge of the jury, and the prisoner was removed from the bar.

On the following morning the trial was resumed at nine o'clock; and Mr. Cockburn, fresh and invigorated, addressed the jury in defence. His speech may be classed amongst the highest efforts of forensic eloquence, at once argumentative and pathetic, leading the reason captive and swaying the passions, fathoming the mysteries of a clouded intellect, and unlocking the fountains of human sympathy. In pursuing that almost indivisible line, which divides perfect and partial

insanity, as narrow and dangerous a path as that broken bridge in the Vision of Mirza, upon the ends of which clouds, and mists, and darkness were supposed to rest, and discussing that most intricate subject, the degree of mental disease which will shield the party afflicted with it from legal responsibility for his acts, a topic obscure as momentous, he proved himself equal to the great occasion, — not unworthy to walk in the footsteps of Erskine and Charles Yorke, whose admirable analysis of a distempered brain when entitled to claim immunity from punishment, upon the trials of Earl Ferrers and Hadfield, will be ever treasured among the most precious archives of professional and scientific knowledge.

His exordium was ornate and impassioned; but not more so than the peculiar interest of the subject and his dread responsibility justified.

"I rise to address you on behalf of the unfortunate prisoner at the bar, who stands charged with the awful crime of murder, under a feeling of anxiety so intense — of responsibility so overwhelming, that I feel almost borne down by the weight of my solemn and difficult task. Gentlemen, believe me when I assure you that I say this, not by way of idle or commonplace exordium, but as expressing the deep emotions by which my mind is agitated. I believe that you — I know that the numerous professional brethren by whom I see myself surrounded — will understand me when I say that of all the positions in which, in the discharge of our various duties in the different relations of life, a man may be placed, none can be more painful or more paralysing to the energies of the mind than that of an advocate to whom is committed the defence of a fellow-being in a matter involving life and death, and who, while deeply convinced that the defence which he has to offer is founded in truth and justice, yet sees, in the circumstances by which the case is surrounded, that which makes him look forward with apprehension and trembling to the result. Gentlemen, if this were an ordinary case — if you had heard of it for the first time since you entered that box — if the individual who has fallen a victim had been some obscure and unknown person, instead of one

whose character, whose excellence, and whose fate had commanded the approbation, the love, and the sympathy of all, I should feel no anxiety as to the issue of this trial. But alas! can I dare to hope that even among you, who are to pass in judgment on the accused, there can be one who has not brought to the judgment-seat a mind imbued with preconceived notions on the case which is the subject of this important inquiry? In all classes of this great community — in every corner of this vast metropolis — from end to end, even to the remotest confines of this extensive empire — has this case been already canvassed, discussed, determined — and that with reference only to the worth of the victim, and the nature of the crime — not with reference to the state or condition of him by whom that crime has been committed — and hence there has arisen in men's minds an insatiate desire of vengeance — there has gone forth a wild and merciless cry for blood, to which you are called upon this day to minister! Yet do I not complain. When I bear in mind how deeply the horror of assassination is stamped on the hearts of men, above all, on the characters of Englishmen, — and believe me, there breathes no one on God's earth by whom that crime is more abhorred than by him who now addresses you, and who, deeply deploring the loss, and acknowledging the goodness — dwelt upon with such touching eloquence by my learned friend — of him who in this instance has been its victim, would fain add, if it may be permitted, an humble tribute to the memory of him who has been taken from us, — when I bear in mind, I say, these things, I will not give way to one single feeling — I will not breathe one single murmur — of complaint or surprise at the passionate excitement which has pervaded the public mind on this unfortunate occasion. But I shall, I trust, be forgiven, if I give utterance to the feelings of fear and dread by which, on approaching this case, I find my mind borne down, lest the fierce and passionate resentment to which this event has given rise, may interfere with the due performance of those sacred functions which you are now called upon to discharge. Yet, Gentlemen, will I not give way to feelings of despair, or address you in the language of despondency. I am not unmindful of the presence in

which I am to plead for the life of my client. I have before me British judges, to whom I pay no idle compliment when I say, that they are possessed of all the qualities which can adorn their exalted station, or ensure to the accused a fair, a patient, and an impartial hearing; I am addressing a British jury — a tribunal to which truth has seldom been a suppliant in vain; I stand in a British court, where Justice, with Mercy for her handmaid, sits enthroned on the noblest of her altars, dispelling, by the brightness of her presence, the clouds which occasionally gather over human intelligence, and awing into silence, by the holiness of her eternal majesty, the angry passions which at times intrude beyond the threshold of her sanctuary, and force their way even to the very steps of her throne. In the name of that eternal justice — in the name of that God, whose great attribute we are taught that justice is, I call upon you to enter upon the consideration of this case with minds divested of every prejudice, of every passion, of every feeling of excitement. In the name of all that is sacred and holy, I call upon you calmly to weigh the evidence which will be brought before you, and to give your judgment according to that evidence. And if this appeal be not, as I know it will not be, made to you in vain, then, Gentlemen, I know the result, and I shall look to the issue without fear or apprehension."

Mr. Cockburn explained that the defence upon which he should rely would entirely turn upon M'Naughton's state of mind at the time he committed the act.

"There is no doubt, Gentlemen, that, according to the law of England, insanity absolves a man from responsibility and from the legal consequences which would otherwise attach to the violation of the law. And in this respect, indeed, the law of England goes no further than the law of every other civilised community on the face of the earth. It goes no further than what reason strictly prescribes; and, if it be not too presumptuous to scan the judgments of a higher tribunal, it may not be too much to believe and hope that when Providence, in its inscrutable wisdom and its unfathomable councils, thinks fit to lay upon a human being the heaviest and most appalling of all calamities to which, in this world of trial and

suffering, human nature can be subjected — the deprivation of that reason, which is man's only light and guide in the intricate and slippery paths of life, will absolve him from his responsibility to the laws of God as well as to those of man. The law, then, takes cognizance of that disease which obscures the intellect, and poisons the very sources of thought and feeling in the human being — which deprives man of reason, and converts him into the similitude of the lower animal — which bears down all the motives that usually stand as barriers around his conduct, and bring him within the operation of the Divine and human law — leaving the unhappy sufferer to the wild impulses which his frantic imagination engenders, and that urge him on with ungovernable fury to the commission of acts which his better reason, when yet unclouded, would have abhorred. The law, therefore, holds that a human being in such a state is exempt from legal responsibility and legal punishment; to hold otherwise would be to violate every principle of justice and humanity. The principle of the English law, therefore, as a general proposition, admits of no doubt whatsoever. But, at the same time, it would be idle to contend that, in the practical application of this great principle, difficulties do not occur. And therefore it is, that I claim your utmost attention whilst I lay before you the considerations which present themselves to my mind upon this most important subject. I have already stated to you, that the defence of the accused will rest upon his mental condition at the time when the offence was committed. The evidence upon which that defence is founded, will be deserving of your most serious attention. It will not be evidence vague, indefinite, and uncertain, as that for the prosecution, but positive and precise. It will be the evidence of persons who have known the prisoner from his infancy — of parties who have been brought into close and intimate contact with him — it will be the evidence of his relations, his friends, and his connections; but as the evidence of near relations and connections is always open to suspicion and distrust, I rejoice to say that it will consist also of the statements of persons whose testimony will be beyond the reach of all suspicion or dispute. Gentlemen, I will

call before you the authorities of his native place, to one and all of whom this unfortunate calamity with which it has pleased Providence to afflict the prisoner at the bar was distinctly known — to all of whom he has from time to time, and again and again, applied for protection from the fancied miseries which his disordered imagination produced: all of them I will call, and their evidence will leave no doubt upon your minds that this man has been the victim of a fierce and fearful delusion, which, after the intellect had become diseased, the moral sense broken down, and self-control destroyed, has led him on to the perpetration of the crime with which he now stands charged. In addition to this evidence, I shall call before you members of the medical profession — men of intelligence, experience, skill, and undoubted probity — who will tell you upon their oaths that it is their belief, their deliberate opinion, their deep conviction, that this man is mad, that he is the creature of delusion, and the victim of ungovernable impulses, which wholly take away from him the character of a reasonable and responsible being."

Well aware that the strength of his defence would depend in the result upon the medical evidence, the persuasive counsel, without disparaging in the slightest degree the capacity of the jury,—there are two classes of gentlemen who are always lauded by orators, gentlemen of the jury, and gentlemen of the press, — ventured thus early to suggest that the question of insanity was the most difficult, upon which men not scientifically acquainted with the subject could be called upon to decide, and upon which the greatest deference should be paid to the opinions of those who have made the subject their peculiar study.

" It is now, I believe, a matter placed beyond doubt, that madness is a disease of the body operating upon the mind, a disease of the cerebral organisation; and that a precise and accurate knowledge of this disease can only be acquired by those who have made it the subject of attention and experience, of long reflection, and of diligent investigation. The very nature of the disease necessitates the seclusion of those who are its victims from the rest of the world. How can we, then, who in the ordinary course of life are brought into con-

tact only with the sane, be competent to judge of the nice and shadowy distinctions which mark the boundary line between mental soundness and mental disease? I do not ask you, Gentlemen, to place your judgment at the mercy, or to surrender your minds and understandings to the opinions, of any set of men — for after all, it must be left to your consciences to decide, — I only point out to you the value and importance of this testimony, and the necessity there is that you should listen with patient attention to the evidence of men of skill and science, who have made insanity the subject of their especial attention. I feel that I may appeal to the many medical gentlemen I see around me, whether the knowledge and pathology of this disease has not within a few recent years first acquired the character of a science? It is known to all that it is but as yesterday that the system of treatment, which in past ages — to the eternal disgrace of those ages — was pursued towards those whom it had pleased Heaven to visit with the heaviest of all human afflictions, and who were therefore best entitled to the tenderest care and most watchful kindness of their Christian brethren — it is but as yesterday, I say, that that system has been changed for another, which, thank God! exists to our honour, and to the comfort and better prospect of recovery of the unfortunate diseased in mind! It is but as yesterday that darkness and solitude — cut off from the rest of mankind like the lepers of old — the dismal cell, the bed of straw, the iron chain, and the inhuman scourge, were the fearful lot of those who were best entitled to human pity and to human sympathy, as being the victims of the most dreadful of all mortal calamities. This state of things has passed, or is passing fast away. But in former times when it did exist, you will not wonder that these unhappy persons were looked upon with a different eye. Thank God! at last, though but at last, humanity and wisdom have penetrated, hand in hand, into the dreary abodes of these miserable beings, and whilst the one has poured the balm of consolation into the bosoms of the afflicted, the other has held the light of science over our hitherto imperfect knowledge of this dire disease, has ascertained its varying character, and marked its shadowy boun-

daries, and taught us how, in gentleness and mercy, best to minister to the relief and restoration of the sufferer! You can easily understand, Gentlemen, that when it was the practice to separate these unhappy beings from the rest of mankind and to subject them to this cruel treatment, the person whose reason was but partially obscured would ultimately, and perhaps speedily, in most cases, be converted into a raving madman. You can easily understand, too, that, when thus immured and shut up from the inspection of public inquiry, neglected, abandoned, overlooked — all the peculiar forms, and characteristics, and changes of this malady were lost sight of and unknown, and kept from the knowledge of mankind at large, and therefore how difficult it was to judge correctly concerning it. Thus I am enabled to understand how it was that crude maxims and singular propositions founded upon the hitherto partial knowledge of this disease, have been put forward and received as authority, although utterly inapplicable to many of the cases arising under the varied forms of insanity. Science is ever on the advance; and no doubt, science of this kind, like all other, is in advance of the generality of mankind. It is a matter of science altogether; and we who have the ordinary duties of our several stations and the business of our respective avocations to occupy our full attention, cannot be so well informed upon it as those who have scientifically pursued the study and the treatment of the disease. I think, then, we shall be fully justified in turning to the doctrines of matured science rather than to the maxims put forth in times when neither knowledge, nor philanthropy, nor philosophy, nor common justice, had their full operation in discussions of this nature."

Against the authority of Lord Hale, the eloquent orator cited the most scientific treatise that the age had produced on the subject of insanity in relation to jurisprudence, the work of Dr. Ray, in which the doctrines somewhat dogmatically laid down by the Chief Justice were disparaged and denied.

"In the time of this eminent jurist, insanity was a much less frequent disease than it now is, and the popular notions concerning it were derived from the observation of those

wretched inmates of the mad-houses whom chains and stripes, cold and filth, had reduced to the stupidity of the idiot, or exasperated to the fury of a demon. Those nice shades of the disease, in which the mind, without being wholly driven from its propriety, pertinaciously clings to some absurd delusion, were either regarded as something very different from real madness, or were too far removed from the common gaze, and too soon converted by bad management into the more active forms of the disease, to enter much into the general idea entertained of madness. Could Lord Hale have contemplated the scenes presented by the lunatic asylums of our own times, we should undoubtedly have received from him a very different doctrine for the regulation of the decisions of after generations."

Mr. Cockburn then heartily commended the subdivisions of insanity which Erskine had so picturesquely pencilled out in his defence of Hadfield, especially that class "where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact; and these are the cases which frequently mock the wisdom of the wisest in judicial trials; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind. Their conclusions are just and frequently profound; but the premises from which they reason, when within the range of the malady, are uniformly false — not false from any defect of knowledge or judgment, but because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance because unconscious of attack. Delusion, therefore, when there is no frenzy or raving madness, is the true character of insanity."

This definition is untrue. In moral insanity, one portion of the man's nature is often in arms against the other, so that the uncontrollable appetite for murder, and the most intense horror of the crime, shall be present in the same individual. Mr. Cockburn sought, however, to deduce from Erskine's theory the conclusion so favourable to his client, that insanity and delusion are inseparable. If they are, then every act done in consequence of a delusion is necessarily an act of

insanity. This was the dangerous position the subtle advocate had to maintain, though he cautiously and darkly shadows it forth in his address.

"Upon that argument, which then prevailed with the court and jury, I take my stand this day. I will bring this case within the scope of the incontrovertible and unanswerable reasoning which it comprises, and I feel perfectly confident that upon you, Gentlemen, this reasoning will not be lost, but that the same result will follow in this as did in that memorable case. My learned friend, the Solicitor-General, has cited to you one or two other cases, which I will dispose of in a few words. A prominent case in his list is that of Earl Ferrers. Here, too, I am glad that my learned friend has referred to the celebrated case of Hadfield, because that case furnishes me with some valuable observations of Lord Erskine's, made on Hadfield's trial, which will enable me to show how that great authority disposed of two of the cases relied on by my learned friend. I prefer to read to you, Gentlemen, those observations rather than trouble you with any of my own. After stating Lord Ferrers' case and drawing the distinction between the species of insane delusion which produces erratic acts, and that species of insanity which I trust I shall be able to prove to you possessed the prisoner now at the bar, Lord Erskine says, 'I have now lying before me the case of Earl Ferrers. Unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt. I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the foundation of it, that I invite you to examine whether any two instances in the whole body of the criminal law are more diametrically opposite to each other than the case of Earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by act of parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business of carrying the act through the two houses. Lord Ferrers consequently wished to turn him out of a farm which he

occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession. There were also some differences respecting coal-mines, and in consequence of both transactions Lord Ferrers took up the most violent resentment against him. Let me here observe,' continues Lord Erskine, 'that this was not a resentment founded upon any illusion; not a resentment forced upon a distempered mind by fallacious images, but depending upon actual circumstances and real facts; and acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines. Now, suppose that Lord Ferrers could have showed that no difference with Mr. Johnson had ever existed regarding his wife at all, that Mr. Johnson had never been his steward, and that he had only, from delusion, believed so when his situation in life was quite different. Suppose, further, that an illusive imagination had alone suggested to him that he had been thwarted by Johnson in his contract with these coal-mines, there never having been any contract at all for coal-mines; in short, that the whole basis of his enmity was without any foundation in nature, and had been shown to have been a morbid image imperiously fastened upon his mind. Such a case as that would have exhibited a character of insanity in Lord Ferrers, extremely different from that in which it was presented by the evidence of his peers. Before them he only appeared as a man of turbulent passions, whose mind was disturbed by no fallacious images of things without existence, whose quarrel with Johnson was founded upon no illusions, but upon existing facts, and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice, and who conducted his own defence with the greatest dexterity and skill. Who then could doubt that Lord Ferrers was a murderer? When the act was done, he said, 'I am glad I have done it. He was a villain, and I am revenged;' but when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient; and, conscious of

his crime, kept at bay the men who came with arms to arrest him; showing, from the beginning to the end, nothing that does not generally accompany the crime for which he was condemned. He was proved, to be sure, to be a man subject to unreasonable prejudices, addicted to absurd practices, and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive, or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the lords, that, under all the circumstances of the case, he was not a fit object of criminal justice.' Thus, Gentlemen, Lord Erskine showed the greatest possible contrast between the two cases; and I shall, in the case now before you, do the same thing. My learned friend has also called your attention to the case of Arnold. That case was also disposed of by Lord Erskine, and here, Gentlemen, is his answer to it: — 'In the same manner, Arnold was convicted, who shot at Lord Onslow, and who was tried at Kingston soon after the Black Act passed, on the accession of George I. Lord Onslow having been very vigilant as a magistrate in suppressing clubs, which were supposed to have been set on foot to disturb the new government, Arnold had been frequently heard to declare, that Lord Onslow would ruin his country; and although he appeared, from the evidence, to be a man of most wild and turbulent manners, yet the people round Guildford who knew him did not in general consider him to be insane. His counsel could not show that any morbid delusion had ever overshadowed his understanding. They could not show, as I shall, that just before he shot at Lord Onslow, he had endeavoured to destroy his own beloved child. It was a case of human resentment.'

"Gentlemen, I will now go on to another case cited by my learned friend the Solicitor-General. I allude to the case of Bowler, which is reported in 'Collinson on Lunacy.' I trust, Gentlemen, I shall not be considered open to the imputation of arrogance, or as travelling out of the line of my duty on the present occasion, if I say that I cannot bring myself to look upon that case without a deep and profound

sense of shame and sorrow that such a decision as was there come to, should ever have been resolved upon by a British jury, or sanctioned by a British judge. What, when I remember that in that case Mr. Warburton, the keeper of a lunatic asylum, was called and examined, and that he stated that the prisoner Bowler had, some months previously, been brought home apparently lifeless, since which time he had perceived a great alteration in his conduct and demeanour; that he would frequently dine at nine o'clock in the morning, eat his meat almost raw, and lie on the grass exposed to rain; that his spirits were so dejected that it was necessary to watch him lest he should destroy himself, — when I remember that it was further proved, in that case, that it was characteristic of insanity occasioned by epilepsy for the patients to imbibe violent antipathies against particular individuals, even their dearest friends, and a desire of taking vengeance upon them, from causes wholly imaginary, which no persuasion could remove, and yet the patient might be rational and collected upon every other subject, — when I also recollect that a commission of lunacy had been issued, and an inquisition taken upon it, whereby the prisoner was found to have been insane from a period anterior to the offence, — when all these recollections cross my mind, I cannot help looking upon that case with feelings bordering upon indignation. But, Gentlemen, I rejoice to say — because it absolves me from the imputation of presumption or arrogance in thus differing from the doctrines laid down in that case by the learned judge, and adopted by the jury — that in the view which I have taken of it I am borne out by the authority of an English judge now living amongst us — a judge who is, and I trust will long continue to be, one of the brightest ornaments of a profession which has, through all times, furnished such shining examples to the world. I refer, Gentlemen, to Mr. Baron Alderson, and the opinion that learned judge pronounced upon Bowler's case on the recent trial of Oxford in this court; and I must say that I think, if the attention of my learned friend the Solicitor-General had been drawn to that case, — if he had heard or read the observations made by Mr. Baron Alderson on that occasion, he would not now

have pressed Bowler's case upon your notice. The Attorney-General of that day, the present Lord Campbell, in conducting the prosecution against Oxford for shooting at her Majesty, had, in his address to the jury, cited the case of Bowler. When he came to the close of it, Mr. Baron Alderson interrupted him with this observation — 'Bowler, I believe, was executed, and *very barbarous it was!*' Such was the expression of Mr. Baron Alderson upon the mention of Bowler's case, and I rejoice to be able to cite it. I reverence the strength of feeling which alone could have given rise to that strength of expression; and I am sure that if the attention of my learned friend had been directed to such an observation coming from so high an authority, I know my learned friend's discretion and sense of propriety too well to think he would have cited Bowler's case for your guidance. Gentlemen, you will therefore, I am sure, dismiss that case from your minds after so clear and decided an exposition of the fallacious views which led to that decision. Let the error in that trial, I implore you, operate as a warning to you not to be carried away headlong by antiquated maxims or delusive doctrines. God grant that never in future times may any authority, judicial or otherwise, have reason in this case to deplore the consequences of a similar error — never may it be in the power of any man to say of you, Gentlemen, that you agreed to a verdict which in itself, or in its execution, deserved to be designated as barbarous. I pass now, Gentlemen, to the next case cited by my learned friend the Solicitor-General, — the case of Bellingham. All I can say of that case is, that I believe, in the opinion of the most scientific men who have considered it, there now exists no doubt at all that Bellingham was a madman. Few, I believe, at this period, unbiassed by the political prejudices of the times, and examining the event as a matter of history, will read the report of Bellingham's trial without being forced to the conclusion that he was really mad, or, at the very least, that the little evidence which did appear relative to the state of his mind was strong enough to have entitled him to a deliberate and thorough investigation of his case. The eminent writer I have already quoted — I mean Dr. Ray — in

speaking of Bellingham's case, says *, — 'It appeared from the history of the accused, from his own account of the transactions that led to the fatal act, and from the testimony of several witnesses, that he laboured under many of those strange delusions that find a place only in the brains of a madman. His fixed belief that his own private grievances were national wrongs; that his country's diplomatic agents in a foreign land neglected to hear his complaints and assist him in his troubles, though they had in reality done more than could have reasonably been expected of them; his conviction, in which he was firm almost to the last, that his losses would be made good by the government, even after he had been repeatedly told, in consequence of repeated applications in various quarters, that the government would not interfere in his affairs; and his determination, on the failure of all other means, to bring his affairs before the country, to effect this purpose by assassinating the head of the government, by which he would have an opportunity of making a public statement of his grievances, and obtaining a triumph, which he never doubted, over the Attorney-General; these were all delusions, as wild and strange as those of seven-eighths of the inmates of any lunatic asylum in the land. And so obvious were they, that though they had not the aid of an Erskine to press them upon the attention of the jury, and though he himself denied the imputation of insanity, the government, as if virtually acknowledging their existence, contended for his responsibility on very different grounds.' . . . That which you have to determine is, whether the prisoner at the bar is guilty of the crime of wilful murder. Now, by 'wilful' must be understood, not the mere will that makes a man raise his hand against another; not a blind instinct that leads to the commission of an irrational act, — because the brute creation, the beasts of the field, have, in that sense, a will; — but by will, with reference to human action, must be understood the necessary moral sense that guides and directs the volition, acting on it through the medium of reason. I quite agree with my learned friend, that it is a question

* Ray's Med. Jurisp., p. 29. sect. 15.

— namely, whether this moral sense exists or not — of fact rather than of law. At the same time, whatever light legal authorities may afford on the one hand, or philosophy and science on the other, we ought to avail ourselves of either with grateful alacrity. This being premised, I will now take the liberty of making a few general observations upon what appears to me to be the true view of the nature of this disease with reference to the application of the important principle of criminal responsibility. To the most superficial observer who has contemplated the mind of man, it must be perfectly obvious that the functions of the mind are of a two-fold nature — those of the intellect or faculty of thought alone — such as perception, judgment, reasoning — and again, those of the moral faculties — the sentiments, affections, propensities, and passions, which it has pleased heaven, for its own wise purposes, to implant in the nature of man. It is now received as an admitted principle by all inquirers, that the seat of the mental disease termed insanity is the cerebral organisation; that is to say, the brain of man. Whatever and wherever may be the seat of the immaterial man, one thing appears perfectly clear to human observation, namely — that the point which connects the immaterial and the material man is the brain; and, furthermore, it is clear that all defects in the cerebral organisation, whether congenital — that is to say, born with a man — or supervening either by disease or by natural and gradual decay, have the effect of impairing and deranging the faculties and functions of the immaterial mind. The soul is there as when first the Maker breathed it into man; but the exercise of the intellectual and moral faculties is vitiated and disordered. Again; a further view of the subject is this — it is one which has only been perfectly understood and elucidated in its full extent by the inquiries of modern times. By any one of the legion of casualties by which the material organisation may be affected, any one or all of these various faculties of the mind may be disordered, — the perception, the judgment, the reason, the sentiments, the affections, the propensities, the passions — any one or all may become subject to insanity; and the mistake existing in ancient times, which the light of

modern science has dispelled, lay in supposing that in order that a man should be mad — incapable of judging between right and wrong, or of exercising that self-control and dominion, without which the knowledge of right and wrong would become vague and useless — it was necessary that he should exhibit those symptoms which would amount to total prostration of the intellect; whereas, modern science has incontrovertibly established that any one of these intellectual and moral functions of the mind may be subject to separate disease, and thereby man may be rendered the victim of the most fearful delusions, the slave of uncontrollable impulses impelling or rather compelling him to the commission of acts such as that which has given rise to the case now under your consideration.

"The Scottish writers on jurisprudence had discussed the subject, what excuse should avail, very clearly. 'It must be,' said Baron Hume, 'such a disease as deprives the patient of the knowledge of the true disposition of things about him, and of the discernment of friend from foe, and gives him up to the impulse of his own distempered fancy, divested of all self-government or control of his passions. Whether it should be added to the description that he must have lost all knowledge of good and evil, right and wrong, is a more delicate question, and fit, perhaps, to be resolved differently, according to the sense in which it is understood. If it be put in this sense in a case, for instance, of murder — did the panel know that murder was a crime? would he have answered yes to the question, that it is wrong to kill a neighbour? — this is hardly to be reputed a just criterion of such a state of soundness as ought to make a man accountable in law for his acts. Because it may happen to a person, to answer in this way, who yet is so absolutely mad as to have lost all true observation of facts, all understanding of the good or bad intention of those who are about him, or even the knowledge of their persons. But if the question is put in this other and more special sense, as relative to the act done by the panel, and his understanding of the particular situation in which he conceived himself to stand, — did he at that moment understand the evil of what he did? was he

impressed with the consciousness of guilt and fear of punishment? — it is then a pertinent and a material question, but which cannot, to any substantial purpose, be answered, without taking into consideration the whole circumstances of the situation. Every judgment in the matter of right and wrong supposes a case, or state of facts, to which it applies. And though the panel may have that vestige of reason which may enable him to answer in the general, that murder is a crime, yet if he cannot distinguish his friend from his enemy, or a benefit from an injury, but conceives everything about him to be the reverse of what it really is, and mistakes the illusions of his fancy for realities in respect of his own condition and that of others, those remains of intellect are of no use to him towards the government of his actions, nor in enabling him to form a judgment on any particular situation or conjunction of what is right or wrong with regard to it; if he does not know the person of his friend or neighbour, or, though he do know him, if he is possessed with the vain conceit that he is come there to destroy him, or that he has already done him the most cruel injuries, and that all about him are engaged in one foul conspiracy to abuse him, as well might he be utterly ignorant of the quality of murder. Proceeding as it does on a false case or conjuration of his own fancy, his judgment of right and wrong, as to any responsibility that should attend it, is truly the same as none at all. It is, therefore, only in this complete and appropriated sense, as relative to the particular thing done, and the situation of the panel's feelings and consciousness on that occasion, that this inquiry concerning his intelligence of moral good or evil is material, and not in any other or larger sense.'

"This, Gentlemen, I take to be the true interpretation and construction of the law. The question is not here, as my learned friend would have you think, whether this individual knew that he was killing another when he raised his hand to destroy him, although he might be under a delusion, but whether under that delusion of mind he did an act which he would not have done under any other circumstances, save under the impulse of the delusion which he

could not control, and out of which delusion alone the act itself arose.

"'The purest minds,' says Dr. Ray, 'cannot express greater horror and loathing of various crimes than madmen often do, and from precisely the same causes. Their abstract conceptions of crime, not being perverted by the influence of disease, present its hideous outlines as strongly defined as they ever were in the healthiest condition; and the disapprobation they express at the sight, arises from sincere and honest convictions. The *particular* criminal act, however, becomes divorced in their minds from its relations to crime in the *abstract;* and being regarded only in connection with some favourite object which it may help to obtain, and which they see no reason to refrain from pursuing, is viewed, in fact, as of a highly laudable and meritorious nature. Herein, then, consists their insanity, not in preferring vice to virtue, in applauding crime and ridiculing justice, but in being unable to discern the essential identity of nature between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned. It is a fact not calculated to increase our faith in the march of intellect, that the very trait peculiarly characteristic of insanity has been seized upon as conclusive proof of sanity in doubtful cases; and thus the infirmity that entitles one to protection, is tortured into a good and sufficient reason for completing his ruin.' I trust, Gentlemen, that these observations, proceeding from a man of the most scientific observation, having all the facilities of studying everything connected with the subject, will not be lost upon you. I could mention case after case—I could continue till the sun should go down on my uncompleted task—I could cite case after case, in which the intellectual faculty was so impaired, that the insanity upon one point was beyond all doubt, and yet where there was upon all others the utmost sagacity and intelligence. You will see that all the evidence of my learned friend the Solicitor-General relates to the ordinary relations of a man's life. That does not affect the real question. It may be that this man understood the nature of right and wrong on general

subjects—it may be that he was competent to manage his own affairs, that he could fulfil his part in the different relations of life, that he was capable of transacting all ordinary business. I grant it. But admitting all this, it does not follow that he was not subject to delusion, and insane. If I had represented this as the case of a man altogether subject to a total frenzy—that all traces of human reason were obliterated and gone—that his life was one perpetual series of paroxysms of rage and fury, my learned friend might well have met me with the evidence he has produced upon the present occasion; but when I put my case upon the other ground, that of partial delusion, my learned friend has been adducing evidence which is altogether beside the question. I can show you instances in which a man was, on some particular point, to all intents and purposes mad—where reason had lost its empire—where the moral sense was effaced and gone—where all control, all self-dominion, was lost for ever under one particular delusion; and yet where, in all the moral and social relations of life, there was, in all other respects, no neglect, no irrationality—where the man might have gone through life without his infirmity being known to any, except those to whom a knowledge of the particular delusion had been communicated. My learned friend has remarked upon the silent design and contrivance which the prisoner manifested upon the occasion in question, as well as upon his rationality in the ordinary transactions of life. But my friend forgets that it is an established fact in the history of this disease, perhaps one of its most striking phenomena, that a man may be mad, may be under the influence of a wild and insane delusion,—one who, all barriers of self-control being broken down, is driven by frenzied impulse into crime,—and yet, in carrying out the fell purposes which a diseased mind has suggested, may show all the skill, subtlety, and cunning, which the most intelligent and sane would have exhibited. In the present case, my learned friend the Solicitor-General has told you, that the prisoner watched for his victim, haunted the neighbourhood of the government offices, waited for the moment to strike the blow, and throughout exhibited a degree of

design and deliberation inconsistent with insanity. The same in Hadfield's case; Hadfield went to the theatre, got his pistol loaded, and took his position in a place to command the situation in which he knew the king would sit; he raised the pistol, he took deliberate aim, and fired at the person of the king. . . . . Men who have no interests to advocate, who are likely to take no partial view, or to be operated upon by any bias, have held the calm light of science over this intricate question; and they have come to results which I have taken the liberty of laying before you, acting on the belief that they will afford you the best aid to guide you in this inquiry. What then, Gentlemen, is the result of these observations? What is the practical conclusion of these investigations of modern science upon the subject of insanity? It is simply this — that a man, though his mind may be sane upon other points, may, by the effect of mental disease, be rendered wholly incompetent to see some one or more of the relations of subsisting things around him in their true light, and, though possessed of moral perception and control in general, may become the creature and the victim of some impulse so irresistibly strong as to annihilate all possibility of self-dominion or resistance in the particular instance; and this being so, it follows, that if, under such an impulse, a man commits an act which the law denounces and visits with punishment, he cannot be made subject to such punishment, because he is not under the restraint of those motives which could alone create human responsibility. If, then, you shall find in this case that the moral sense was impaired, that this act was the result of a morbid delusion, and necessarily connects itself with that delusion; if I can establish such a case by evidence, so as to bring myself within the interpretation which the highest authorities have said is the true principle of law as they have laid it down for the guidance of courts of law and juries in inquiries of this kind, I shall feel perfectly confident that your verdict must be in favour of the prisoner at the bar."

Mr. Cockburn then related shortly the distressing facts he was prepared to prove; and continued, — "He gave up his business, from which he was deriving considerable gain.

Why? Doubtless because at that time the fearful phantasms of his own imagination rendered his existence miserable. He was wretched, because he was constantly harassed by the terrible images his disordered mind conjured up. These terrifying delusions had become associated with the place of his abode, haunting him at all hours of the day and night. You will hear from one of the witnesses, to whom he explained himself, that he gave up business 'on account of the persecution by which he was pursued.' Yet it appears that all this time his business was prosperous and thriving, and, in addition, the great tendency of his mind seemed still to be a desire to earn money and to save it. That these phantasms long existed in that man's mind there is no doubt, before he at length sought relief by flight from this hideous nightmare, which everlastingly tortured his distracted senses. No doubt these delusions existed in his mind before, but it was not until he left his business that they were revealed to others in anything like a definite shape. And, Gentlemen, you will learn from the medical authorities that it was natural for him, who became at last borne down by these delusions, to struggle against them as long as he could; to resist their influence, and to conceal their existence; until at last the mind, overwrought and overturned, could contain itself no longer, and was obliged to give form, and shape, and expression, 'a local habitation and a name,' to the phantasies against which it struggled at first, believing, it may be, for a time, that they were but delusions, until, their influence gradually prevailing above the declining judgment, they at last assumed all the appearance of reality, and the man became as firmly persuaded of the substantiality of these creations of his own fevered brain as of his very existence. Wherever he was, these creatures of his imagination still haunted him with eager enmity, for the purpose of destroying his happiness and his life. Nothing, then, could be more natural than that a man under such a persuasion should attempt to escape from the persecution which he erringly imagined to exist, and to seek in some change of place and clime a refuge from the tortures he endured. Alas! alas! in this man's case the

question put by the poet of old received a melancholy response,—

"——— Patriæ quis exul
Se quoque fugit?"
What exile from his country's shore can from himself escape?

When he left his own country he visited England, and then France; but nowhere was there a 'resting-place for the sole of his foot.' Wherever he went, his diseased mind carried with him the diseased productions of its own perverted nature. Wherever he was, there were his fancies; there were present to his mind his imaginary persecutors. When he planted his foot on the quay at Boulogne, there he found them. No sooner was he landed on a foreign soil, than there were his visionary enemies around him. Again he fled from them, and again returned to his native land. Feeling the impossibility of escape from his tormenters, what course did he pursue? When he found it was impossible to go anywhere by night or by day to effect his escape from those beings which his disordered imagination kept hovering around him, what does he? What was the best test of the reality of the delusion? That he should act exactly as a sane man would have done, if they had been realities instead of delusions. And there is my answer to the fallacious test of my learned friend the Solicitor-General. He did so act; he acted as a sane man would have done, but he manifested beyond all doubt the continued existence of the delusions. He goes to the authorities of his native place, to those who could afford him protection, and with clamours intreats and implores them to defend him from the conspiracy, which he told them had been entered into against his happiness and his life. I shall show you that six or eight months ago this man came to Mr. Turner and introduced himself to him as the son of an old member of his congregation. At first he was perfectly tranquil; as long as the fatal topic was not touched upon, his manner was calm and collected as was his wont. But Mr. Turner will tell you, that when he began upon the fatal subject which formed the main feature of their conversation, his manner became excited and wild, his gesticulation violent, drops of sweat stood upon his brow, denoting the conflict and

agony that was going on within. Mr. Turner will tell you the conversation that took place—that the prisoner told him he was the object of a bitter conspiracy of a political party in that city who were plotting his ruin—that he had endeavoured in every possible way to escape from them, but in vain. He will tell you that the prisoner spoke of having recourse to the authority of the Lord Provost, and the object of his visit to Mr. Turner was to induce that gentleman to intercede with his (the prisoner's) father on his behalf, in order that the persecution he suffered under might be averted. He felt it a duty he owed both to father and son, as the minister of the congregation, to go to the father, which he did, telling him his opinion that his son was insane, and that he ought to be looked to. Would to God that advice had been listened to! Would to God that warning voice had produced the effect which was intended! Then this melancholy catastrophe might have been prevented! By judicious medical treatment, the man might have been restored to reason; or, at all events, such means might have been resorted to as the law allows for the protection of society, Oh! then, what different results would have been produced! The unhappy prisoner might have been spared the horror of having imbrued his hand in the blood of a fellow-creature—he would have been spared the having to stand to-day at that bar on his trial for having committed the worst crime of which human nature is capable: as it now is, his only trust must be in your good sense, judgment, and humanity,—in the opinion which you may form upon the evidence which those who come from a distant part to throw a light on the subject will give you, and in such aid as my humble capacity enables me to afford him.

"The Solicitor-General has said that you are not, from the nature of the act itself, to draw an inference as to the state of mind of the person committing it. My learned friend puts the proposition rather vaguely, but I can scarcely suppose that he meant what I have just said to the full extent of the terms. He might have meant either that you were not necessarily to infer from the nature of the act, from its atrocity and the absence of all probable impelling

motives, the insanity of the person committing it — that is to say, that you were not to infer it conclusively from those circumstances alone — or he might have meant that the nature of the act itself ought not at all to be an ingredient in forming a judgment of the state of the party committing it. Now, if my learned friend could have meant this last proposition, I must say, that with all my respect for him, I should be compelled boldly to differ from him, and to dissent altogether from a proposition so monstrous as that would seem to be. If it be found that an act is done for which he who committed it was without any of those motives which usually actuate men in a state of sanity to wickedness and crime — if the whole circumstances connected with the perpetration of that act tend to show that it was one wholly inconsistent with the relation towards the surrounding world of the party committing it, am I, in such a case, to be told that I am to draw no inference at all from the nature of the act itself? I am sure, Gentlemen, you will not allow your minds to be influenced and misled by any such proposition. You must look to the act, not conclusively, indeed, but in connection with the other leading circumstances of the case. What is the act? In the broad face of day — in the presence of surrounding numbers — in one of the great and busy thoroughfares of this peopled metropolis — with the certainty of detection, and the impossibility of flight — with the inevitable certainty of the terrible punishment awarded to such a deed — a man takes away the life from one who (in any view of the case) had never, in thought, word, or deed, done to the perpetrator of that act the faintest vestige of an injury — from one who, as my learned friend yesterday described him, was of so mild a nature that he would not injure any being that had life — does this in the total absence of all motive, with the certainty of inevitable detection, and of equally inevitable punishment; — yet you are told by my learned friend that you are not to let the nature and the circumstances of such an act enter into your judgment as to whether the person so committing it was sane or not! Who is there who, not having his judgment overclouded by the indignation which the very mention of such a deed is cal-

culated to excite, could bring for a single moment his dispassionate reason to bear upon the nature of the case,— whose mind would not suggest that the act must be that of a frenzied lunatic, and not of one possessed of his senses? My learned friend says that, nevertheless, you are not to look to the question of motive, and he appeals to history for instances where fanaticism and enthusiasm have operated on ill-regulated minds to induce them to commit similar crimes. I might possibly object that these instances are not strictly in evidence before you, but I will not adopt such a course. I admit, that in order to understand the nature of insanity aright, we must look beyond the evidence in the particular case. I will travel, therefore, with my learned friend beyond the facts now before you, and will turn to history in order to aid our judgment. I concede to him that fanaticism and enthusiasm operating on ill-regulated minds have produced similar disastrous results on former occasions. But look at the mode in which those motives operated on the minds of the criminals. The religious fanatic sharpened his steel against his sovereign's life, because he was told by a fanatical priesthood that he was doing a service to God and to religion — that he was devoting himself by that act to the maintenance of God's religion, and that while incurring an earthly martyrdom, he was also ensuring to himself an everlasting reward. Again, I admit that political enthusiasm has urged on others to similar crimes. Why? Because they acted under the belief that in some great emergency, while they were sacrificing the moral law, they were ensuring the welfare of their country. They were impelled by fanaticism in another form, by political enthusiasm, by misdirected and ill-guided notions of patriotism. Political enthusiasm! Where in this case is there a single trace of the existence of such a sentiment in the mind of the assassin? Where has the evidence for the prosecution furnished you with a single instance of political extravagance on the part of this man? Is he shown to have taken a strong and active part in political matters? Did he attend political meetings? Is he shown to have been a man of ill-guided, strong, and enthusiastic political sentiments? There is not a tittle of

evidence on that subject. Many among us entertain strong political opinions. I do not disclaim them myself. I entertain them, and most strongly too; but if I believed that they would make me love, cherish, esteem, or honour any human being the less on account of his holding different opinions, I would renounce politics for ever, for I would rather live under the most despotical and slavish government than forego aught of those feelings of humanity which are the charm of human life, and without which this world would be a wilderness. Therefore I say, that my learned friend hastened too rapidly to the conclusion he has come to, when he says that the prisoner has committed murder under the influence of political enthusiasm. My learned friend has not adduced a single exaggerated expression of a political nature on the part of the prisoner? It was for him to make out a case of political enthusiasm. He has not only failed in so doing; he has not even attempted to take on himself the burden of proving its existence. On the contrary, it appears that this man, being a man of thinking mind (perhaps too much so), though he would occasionally speak on politics as on other grave matters, was of very moderate political opinions; — that so far from being a man likely to abet violence on the score of political opinion, he denounced in the strongest terms the extragavant views and opinions of the Chartist and Radical leaders. And when you tell me, in answer to the remark that there was no visible motive in the prisoner for shooting Mr. Drummond, that he was mistaken in his victim, and that his blow was intended for Sir Robert Peel, I will prove to you that so far from his entertaining any animosity towards that distinguished statesman, he has been heard to speak of him in terms of respect — with a warm panegyric of his talents, he having heard him speak once when admitted to the gallery of the House of Commons, and that he has declared his opinion that Sir Robert Peel was or would live to become a very great man. And this brings me to the question, whether or not the delusion under which the prisoner previously laboured existed in his mind at the time the act was done with which he now stands charged, and in truth was the cause of that act? I have already laid before you circumstances (and they

will be proved in evidence) which establish beyond all controversy the existence of a delusion, exercising a blind and imperious influence over the man; and I have only further to establish, that the delusion led to the act, and was subsisting at the time that act was done. But surely it would be most monstrous and unjust to say that the same degree of delusion which prevailed eighteen months or two years before, did not exist at the time of his committing the act."

After severely denouncing the treacherous conduct of the policeman, an inquisitor and spy, upon whose evidence alone the fact of the prisoner designing to shoot Sir R. Peel depended, and urging the jury to dismiss it, Mr. Cockburn dwelt forcibly on his own written statement.

"Save only that the enemies he spoke of, and their persecution, were the phantoms of a disordered mind,—his statement was true. True it was that he was a different man, in health of body and in health of mind—quite different in the regulation of his passions and propensities—he that at home had been a quiet, calm, inoffensive man—one who never raised his hand against a human being or created thing, had been converted by the pressure of imaginary evils into a shedder of human blood. This statement of the prisoner, which doubtless, at first, was received with suspicion, shows, when coupled with his previous history, in a totally different light, and now cannot be regarded otherwise than as the true and genuine expression of the feelings which were alive in his breast. No wonder that in the first excitement of popular feeling such a statement should be unfavourably received—the people had seen an innocent and unoffending man perish by the hand of an assassin—they were justified in viewing with distrust manifestations of insanity which might be only assumed, but now, when the fearful delusions under which this man has so long laboured are made clearly known to you, the whole matter will, I am sure, be regarded by you under a totally different aspect. But then the Solicitor-General speciously asks, whether this is not the case of a man feigning and simulating insanity, in order to avoid the consequences of his crime? It is not so—it is the case of a man who manifested, after the deed was done, the same delusion,

which will be proved to have been present in his mind for months — nay, years before the act was committed. But I shall not leave this part of the case upon the prisoner's statement alone, for I am enabled to lay before you evidence that will satisfy your minds of the prisoner's insanity since he has been confined within the walls of a prison. He has been visited by members of the medical profession, of the highest intelligence and the greatest skill — not chosen by the prisoner himself — but some of them selected by his friends and others deputed by the Government which my honourable and learned friend, the Solicitor-General, represents on the present occasion. They visited the prisoner together several times — they together heard the questions put to him, and noted the answers he gave. My learned friend has accurately told you the nature of the defence I have to offer; he has sought to anticipate it by evidence to establish the prisoner's sanity. How is it, then, that the medical men employed by the Crown have not been called? Why, my learned friend has now beside him, within his arm's reach, two of the medical gentlemen sent by the government, and he has not dared to call them. My learned friend knew (because their opinions have been communicated to the government and to my learned friend) that the man was mad, and in justice to the public and to the prisoner those gentlemen ought to have been brought forward. There will not be left a shadow of doubt that this was no simulated insanity, but a real delusion, by which the prisoner was deprived of all possibility of self-control, and which left him a prey to violent passions and frenzied impulses. I know there has been much said of the danger of admitting a defence of this kind. I do not dispute it — it is a defence at which it is the province of a court and jury to look with care. True, it is a defence easily made, but it is a defence which the sagacity of courts and juries prevents being too easily established. If an offender should first suggest insanity as a defence after the perpetration of a crime, the eye of suspicion would naturally rest upon such a defence. Here, however, there can be no pretence for saying there is the slightest reason to believe that this was a case of feigning and simulation, when I shall

have proved the existence of the delusion for the space of two long years before, as well as its continuance since, the act was committed. When I have proved this, my learned friend will not dream of contending that this is a case of simulation. Again; I ask, is there no distinction between the manner in which the common murderer who acts under the impulse of ordinary motives executes his purpose, and that of the unhappy maniac, who, in self-defence as he thinks, slays one who, in his delusion, he fancies is attacking him? There is every distinction. The ordinary murderer not only lays plans for the execution of his designs; not only selects time and place best suited to his purpose; but, when successful, he either flies from the scene of his enormities, or makes every effort to avoid discovery. The maniac, on the contrary, for the most part, consults none of the usual conveniences of crime; he falls upon his victim with a blind fury, perhaps in the presence of a multitude, as if expressly to court observation, and without a thought of escape or flight; not unfrequently he voluntarily surrenders himself to the constituted authorities. When, as is sometimes the case, he prepares the means, and calmly and deliberately executes his project, his subsequent conduct is still the same as in the former instance. The criminal often has accomplices, and always vicious associates; the maniac has neither. What was the case in the present instance? The prisoner does not attempt to escape — he acts coolly and deliberately — he shows himself to be a maniac seeking only the gratification of his involuntary impulse — he made no attempt to secure his own safety by flight or escape, though he knew that the noise of his first pistol must have attracted attention to the spot; though he saw Mr. Drummond's coat in flames, and his victim staggering under the shot, though he must have known that his purpose was effected, instead of thinking of himself, he drew forth the other pistol — with a deliberate intent he passed it from one hand to the other, he levelled it at his victim, and when the policeman had even seized him, still the struggle was not to escape, but to raise his arm and to carry out the raging impulse of his burning and fevered brain. A common murderer would have acted in a different

manner; he would have chosen a different time, a different place; he would have sought safety by escape. Gentlemen, I have mentioned that I shall call medical men of the highest rank in the profession — men who have frequently been employed by the government in cases of this nature, and upon whose characters the stamp of the highest approbation has thus been placed. They will state the result of their examination of the prisoner, and their evidence upon the whole will be such as to leave no other than a firm conviction that he is insane. I shall also call the surgeon of the gaol, whose duty it has been to see him daily, and whose facilities of observation have therefore been such as to enable him to come to a sound conclusion, and who, besides, was directed to pay particular attention to the state of the prisoner's mind. My friend has not thought fit to call him. I will call him. You will hear from that gentleman the result of his deliberate and impartial judgment, which is, that the prisoner is labouring under morbid insanity, which takes away from him all power of self-control, and that he is not responsible for his acts. When I have proved these things, I think the defence will be complete. I do not put this case forward as one of total insanity—it is a case of delusion, and I say so from sources upon which the light of science has thrown its holy beam.

"I think, Gentlemen, I have sufficiently dwelt upon the authorities which can throw light on this inquiry. I trust that I have satisfied you, by these authorities, that the disease of partial insanity can exist—that it can lead to a partial or total aberration of the moral senses and affections, which may render the wretched patient incapable of resisting the delusion, and lead him to commit crimes for which morally he cannot be held to be responsible, and in respect of which, when such a case is established, he is withdrawn from the operation of human laws. I proceed now to lay the evidence before you. In doing so, I shall give my learned friend the Solicitor-General the opportunity of a reply. In this case it will be of considerable advantage, for he will have the opportunity of addressing you, and commenting on the evidence after all shall have been given; whereas I can only anticipate what it may be. Many facts may be spoken to by

the witnesses—many important observations may fall from them—on which I shall be deprived of all comment. The arguments which my friend's profound experience and his great legal acquirements may suggest are yet within his own mind—I can but dimly anticipate them. If any advantage should exist in such a case, surely it should not be on the part of the prosecution, but of the prisoner. And my learned friend, moreover, will have the immense advantage resulting from that commanding talent before which we all bow down. But I know that he will prolong to the end of this eventful trial that calm and dispassionate bearing, that dignified and appropriate forbearance, which sat so gracefully on him yesterday. Gentlemen, my task is at an end. I have received at your hands, and at the hands of the Court, a degree of considerate attention for which I owe you my most grateful acknowledgments. I ought to apologise to my lords and to you for the length of time that I have detained you; but you know the arduous and anxious duty which I have had to perform, and you will pardon me. From the beginning to the end I have felt my inadequacy to discharge it; but I have fulfilled it to the best of my poor ability. The rest is with you. I am sure that my observations in all that deserves consideration will be well weighed by you, and I am convinced that the facts of this case, and the evidence adduced in support of them, will be listened to by you with the most anxious and scrupulous attention. You can have but one object—to administer the law according to justice and to truth; and may that great Being from whom all truth proceeds guide you in this solemn inquiry, that when hereafter the proceedings of this memorable day, and their result, shall be scanned by other minds, they may bear testimony that you have rightly done your duty; and, what to you is far more important, that when, hereafter, in the retirement of your own homes, and the secrecy of your own thoughts, you revert to the part you have taken in the business of this day; you may look back with satisfied consciences and tranquil breasts on the verdict you will this day have given! Gentlemen, the life of the prisoner is in your hands; it is for you to say whether you will visit one on whom God has been

pleased to bring the heaviest of all human calamities — the most painful, the most appalling, of all mortal ills — with the consequences of an act which most undoubtedly, but for this calamity, never would have been committed. It is for you to say whether you will consign a fellow-being under such circumstances to a painful and ignominious death. May God protect both you and him from the consequences of erring reason and mistaken judgment! In conclusion, let me remind you, that, though you do not punish the prisoner for an offence committed at a time when he was unconscious of wrong, you have, on the other hand, the power of causing him to be placed in an asylum, provided by the mercy of the law, where he will be protected from the consequences of his own delusions, and society will be secured from the danger of his acts. With these observations I trust the case in your hands, with the full conviction that justice will be upheld in the verdict to which you shall come."

Daniel M'Naughton, the father of the prisoner, was then called, and gave his evidence so fairly, without any apparent wish to colour or exaggerate the real facts, as to raise a strong impression of his speaking the exact truth. He was a turner at Glasgow, and stated that the prisoner, his natural son, had worked with him as journeyman for three years, had been then apprenticed, and settled in business on his own account. He was of steady, temperate habits. "After he went into business, I did not see him so often, although I saw him then frequently. He seemed to me more distant than formerly, but I knew of no reason for his being so. He would frequently pass me in the street, and not speak to or notice me. About two years ago I recollect the prisoner calling at my house, and, upon seeing me, he expressed a wish to have an interview in private. We went into a room alone, and he then told me that various persecutions had been raised against him, and begged that I would speak to the authorities of the town upon the subject, in order to have a stop put to them. He particularly mentioned the name of Mr. Sheriff Alison, as one of the persons I was to speak to. I asked who the persons were that persecuted him, and he told me that Mr. Sheriff Alison knew all about it. I told him I was ex-

tremely sorry to hear that he was so persecuted, and endeavoured to persuade him that he was labouring under some mistake. I told him that I was not aware of any person being persecutive in Glasgow. Finding that he was labouring under some delusion, I said nothing more upon the subject, but tried to turn the conversation. We then talked upon other subjects, upon all of which he spoke rationally enough. He then asked me to get him a situation in some counting-house in Glasgow. I promised him that I would endeavour to do so, but told him that I thought he had in the first instance better go to some respectable teacher, and learn writing and arithmetic. He said he would do so, and we then parted. About a week after that interview, he again called upon me, and inquired whether I had, according to my promise, caused the authorities to take any measures to prevent the persecution which was going on against him? I told him that I thought after our last interview he would have gone to school and banished all such ideas from his mind. He then said that the persecution still continued, and that he was followed night and day by spies; wherever he went, they followed him. I asked him who the spies were, whether he knew any of them, or whether he could point them out? To which he replied, that it would be quite useless to point them out, as they were always in his presence; wherever he might be, whenever he turned round, there they were. I asked him whether he ever spoke to them, or they to him? He said they never spoke to him, but whenever he looked at them they laughed at him, and shook their fists in his face, and those who had sticks shook them at him. He also said, that one of the men, whenever he looked at him, threw straws in his face. I asked him whether, if I went out with him, he could point out any of the spies to me? He said, 'Oh, no; if they see any one with me, they will not follow at all; it is only when I am alone that they follow and annoy me.' I then asked him what he thought they meant by showing him straws? To which he replied, he presumed it meant that he was to be reduced to a state of beggary by them."

He insisted on his father calling on Sheriff Bell. The

witness promised to call, but did not, scarcely knowing what to say, and was strongly censured by the prisoner for not being true to his word. "I saw nothing more of him for a considerable time, and I then accidentally met him on the road, a short distance (about four miles) from Glasgow. We had a conversation for upwards of an hour, and the chief topic was the persecution he was enduring; he repeated the assertions respecting the spies, and complained of his being followed and annoyed by them wherever he went; he declared that he had used his utmost endeavours to get rid of them, but it was all in vain; he said he had left Glasgow, and had gone to England, and even to France, to get rid of them, but they still followed him; the moment he landed in France, there they were also. After that interview he called upon me again, and requested that I would prevail upon the authorities, particularly Sheriffs Alison and Bell, to put an immediate stop to the persecution. On that occasion I reasoned with him for some time on the folly and absurdity of supposing that such a conspiracy existed against him, and assured him that such was not the case; and I then thought that the impression was effaced. He again spoke to me about getting him a situation, and I promised I would do so. Between that interview and the month of September, he called upon me several times, and always requested me to see the authorities upon the subject. I never saw any of the civil authorities, as I saw that he was labouring under some extraordinary delusion, and therefore considered it quite unnecessary."

The cross-examination of the father by Sir William Follett did not elicit anything material, either to shake his testimony or the conclusion to which it led. "I believe he went into business for himself, because he felt dissatisfied at my not letting him have a share in my little business."

Solicitor-General. Did he ask you to take him into partnership? — Yes, he did: but I refused because I had some younger children to provide for. After he went into business we very seldom spoke. For a long time I think he fancied that I was annoyed because he took some of my business from me, which was not the case. We were not at

all upon the terms that a father and son usually are. At times party politics run very high at Glasgow.

At the time the conversation you have been mentioning occurred, what was your opinion with respect to your son's mind? — It certainly was my impression that his intellects were impaired.

Did you consult any medical gentleman? — I did not, because I thought the delusions under which he was labouring would eventually pass away.

Then am I to understand that upon all other subjects he conversed rationally? — Yes, upon all subjects except the one I have mentioned.

His son appeared to be too harmless to commit an injury, and M'Naughton was naturally loath to incur expense for medical advice in dispelling mere shadows.

William Gilchrist, a printer, who lodged with the prisoner for a year, from April, 1834, to May, 1835, spoke of his strange incoherent ways, the natural results of an irritable and diseased brain. "The prisoner used frequently to get up in the night and walk about the room, uttering incoherent sentences, and making use of such ejaculations as 'By Jove,' 'My God.' He uttered them in a very serious manner, but not in a very loud tone. Sometimes he would walk about the room by the hour together whilst undressed, and then return to bed. Such conduct occurred from time to time during the whole period we lodged together. His conduct was always that of a mild, inoffensive, and humane man. I have frequently seen him, when we have been going out to take a walk, put crumbs of bread into his pocket to feed the birds with. He appeared to be very fond of children, and I have observed him watch the children at play for hours; he said he liked to see their innocence. The last time I saw the prisoner was in July, 1842, when we walked together for a short distance. I then thought he was altered, both in manner and appearance; for when I looked at him he always dropped down his head and looked on the ground. I also observed that his conversation was not so connected as formerly. I have known the prisoner sometimes in the course of the night, as well as at other times, burst out into

immoderate fits of laughter without any cause whatever; at other times he would moan. I never knew him to attend any political meetings, or express any extravagant political opinions. When I last saw him he told me, in the course of conversation, that when he was in London he went one night to the House of Commons, and heard Sir Robert Peel, Lord John Russell, and Mr O'Connell speak, and he expressed himself highly delighted."

Mr. Bodkin. What did he say?

Witness. He said he thought Sir Robert Peel had arrived at what Lord Byron had said of him, "that he would be something great in the state;" he said he thought Lord John Russell was very inferior as a speaker to Sir Robert Peel, and that Mr. O'Connell was inferior to both.

Did you ever hear him, either on that or any other occasion, speak at all disrespectfully of Sir Robert Peel?—Certainly not.

Cross-examined by Mr. Adolphus. The ejaculations which I have spoken of, and also the laughter, might have been caused by the recollection of something he had previously heard, and of which I was not aware.

This sudden violent laughter after a long fit of abstraction or moody musing, was one of the insane traits attributed to Oxford, and there can be no doubt that sudden, unrestrained, causeless merriment, the γέλως ασβεστος, is a usual characteristic of the insane.

John Hughes, a tailor at Glasgow, with whom the prisoner lodged in the latter part of 1835, gave several instances of his strange manner and behaviour. "He did not appear to be fond of society, and scarcely ever spoke unless first spoken to, and then his replies were quick and hurried, as if he wished to avoid conversation. I also noticed that, when any person spoke to him, if their eye caught his, he immediately looked down to the ground, as if ashamed; whenever he asked for anything he appeared confused. Another reason I had for wishing him to leave was in consequence of the infidel doctrines he maintained, and the books of such a character which he was in the habit of reading. I always have family worship in my house on Sunday, and generally in the week days. The prisoner mostly attended on Sundays."

Mr. Justice Coleridge. Have you any children living in your house?

Witness. I have, my Lord.

Mr. Justice Coleridge. Did the prisoner seem fond, or take any notice of them?

Witness. He never used to take any notice of them.

This account seemed inconsistent with Gilchrist's story of M'Naughton's fondness for children; but who can grasp quicksilver in the hand, or expect coherence of conduct in the insane?

William Carlo, who had served the prisoner as a journeyman turner for three years, and purchased the business from him in 1841, gave strong corroborative evidence of his fevered and restless condition. "Whilst I was in his employ he frequently complained of a pain in his head, and would often keep his hand to his head, as if in pain, the greater part of the evening. When in this state I have known him on several occasions go and bathe in the Clyde, which is near the premises, in order to get rid of it. I have very frequently seen him since 1841, but never observed any thing particularly the matter with him till about six months ago. I had frequently heard it stated during the last eighteen months that there was something wrong about him, but I did not believe it. In consequence of those rumours, however, I went to see him whilst lodging at Mrs. Patterson's. We then walked out together, and he gave me a description of his visit to France; the only motive he assigned to me for going there was curiosity. In the course of our conversation he told me he was very much persecuted by certain parties, who always followed him about wherever he went, and that he could get no rest for them night or day. He said they were using all their influence against him, in order to prevent his getting a situation; whether he went to France, England, or Scotland, the spies were always about him. He told me it was immaterial in what country he was, for they were sure to send their emissaries before him, and he was known wherever he went. I asked him who the parties were, and he told me they were Scotchmen, and natives of Glasgow. I told him it was all imagination, and endeavoured to persuade him to think no-

thing more about it. I also told him that if any person ill-used him or slandered him I would have them punished, as I considered his character was very good. He said he would do so; and added, that if he could once set his eyes upon them, they should not be long in the land of the living. After the conversation had continued for some time, he became very much excited; and, seeing that he was labouring under some extraordinary excitement, I considered it prudent to drop the subject. In consequence of that conversation I immediately came to the conclusion that he was not in his right mind.

Cross-examined by Mr. Waddington. His habits were rather eccentric.

Mr. Waddington. What do you mean by eccentric?—Why, that he was very hard-working and penurious; he was also eccentric in his dress. The last few times that I saw him I noticed that he was not quite so cheerful as usual, though he was generally sullen and reserved, and always evinced a disposition to evade conversation.

That the mental disease of the prisoner gradually gained strength and intensity was proved by Jane Patterson, with whom he lodged in 1841. "I observed something very peculiar in his manner. His eyes presented a very strange appearance. He looked wild and very different from what he used to do. He was also very restless in his sleep. I frequently heard him moan and groan in his sleep, and sometimes he spoke as if disturbed. I told him he had better stop away altogether; to which he replied that he could not stop either in London or France, as he was constantly haunted by a parcel of devils following him, and said they were persons from Glasgow. He appeared then rather angry. I spoke to him upon the subject several times afterwards. I at length began to be afraid of him, and expressed a wish for him to leave my house. He said he would leave as soon as possible; he could get situations anywhere, but it was of no use, as they were all haunted with devils. On one occasion, a few days before he left, which was in September, I found some pistols in his room. I said, 'What in the name of God are you doing with pistols there?' He said he was going to shoot birds with them. I never saw the pistols

after that. Latterly he was in the habit of lying on the bed nearly all day. He sometimes complained of lowness of spirits, and said he felt a great pain and burning in the chest. On one occasion, when I was speaking to him about getting a situation, he laid hold of me, made use of an oath, and looked very wild. When he went away he took nothing with him but the clothes on his back. I noticed when he went away that he looked very wild and frightsome-like."

If any suspicion could have been instilled into the minds of the Court or jury, from the humble rank in life of these persons, that they were aggravating symptoms and distorting facts to screen an old associate, the station and importance of the next class of witnesses must have completely removed such an impression.

Mr. Henry C. Bell, one of the sheriffs depute of the county of Lanark, confirmed in other instances this crazed fancy of persecutions. "I am one of the sheriffs depute of the county of Lanark, and reside at Glasgow. I do not know the prisoner personally; I believe him to be the person who called upon me some time ago (I think it must be about nine or ten months), and complained to me that he was harassed to death by a system of persecution, which had for some time been adopted towards him, and for which he could obtain no redress whatever. I told him I would render him any assistance in my power, and asked him the nature of the persecution he complained of. He made a long, rambling, unintelligible statement in reply, from which I gathered, as far as I can recollect, that he was constantly beset by spies, and that he considered his life and property in danger. I told him that I thought he must be labouring under some very erroneous impression, and advised him, if he had any criminal charge to make against any person, to go to the Procurator-Fiscal, or if his complaint was of a civil nature, to apply to some man of business. He said it would be perfectly useless to make any such application, and appearing dissatisfied with my answer, he went away. The same person called upon me again about a fortnight or three weeks afterwards. I asked him whether he had seen the Procurator-Fiscal or a man of business, and he said he had not. He

then made another statement of a precisely similar character, but I told him that I could not render him any assistance, and he then went away. I certainly concluded that he was not right in his intellects—that he was labouring under some very extraordinary delusion, and I made a remark to that effect to my clerk."

This witness was not cross-examined.

Alexander Johnston, Esq., M. P. "He called upon me about a twelvemonth ago (previous to which period I knew nothing of him), and complained of being subjected to an extraordinary system of persecution, and wished for my advice as to the best method of getting rid of it. On subjects of general business he talked very rationally, but with respect to the particular business upon which he called upon me, he said that he had for a considerable time been persecuted by the emissaries of a political party, whom he had offended by interfering in politics. He also complained of being attacked through the newspapers, and said the persons of whom he complained followed him night and day; that he could get no rest for them; that they had destroyed his peace of mind, and what to do he really did not know. I reasoned with him, and told him that I thought he must be mistaken; assured him that nobody followed him about, and advised him, if he received any annoyances, to apply to the captain of police. He then said that he thought his persecutors would be satisfied with nothing less than his life. When I told him that I thought he was mistaken, he said that he was quite certain that he was not. He assured me that he was perfectly sound in his mind, and in good bodily health. He then left me.

Mr. Clarkson. What was the impression left upon your mind by that interview?—I certainly thought that what he stated was his firm conviction. In about a week or ten days the prisoner again called upon me, and he then told me that his persecutors were still pursuing him, and wished me to take some steps in order to deter them from so doing. I again recommended him to go to the sheriff, and assured him that if he was in reality annoyed as he had described, he would be protected. I merely told him that in order to get

rid of him, feeling assured that he was labouring under a delusion. About a month after the last interview, I came to London, and in a few days I received a letter from the prisoner, reiterating the same complaints, and begging of me to interfere in his behalf; to that communication I wrote the letter produced."

"Reform Club, May 5, 1842.

"Sir,—I received your letter of the 3d of May, and am sorry I can do nothing for you. I fear you are labouring under an aberration of mind, and I think you have no reason to entertain such fears.

I am, &c.,

"ALEXANDER JOHNSTON.

"Mr. D. M'Naughton."

Sir James Campbell, Lord Provost of Glasgow for that and the preceding year, next related a curious conversation with the unhappy man. "I recollect that, some time in the month of May in that year, the prisoner called upon me, and I had a conversation with him. I asked him the object of his visit, and he said he wanted my advice and protection. He then said, that he was the victim of an extraordinary persecution; that he was followed and beset by spies night and day, and that he could not get rid of them; they dogged him wherever he went, and he could not in consequence get any rest night or day; that he was afraid to go home, and had therefore been compelled to sleep in the fields in the suburbs of the town. I asked him who his persecutors were, and he told me they were persons who had an ill-feeling towards him, and that he considered his life in danger in consequence. I at once saw that he was labouring under a strange delusion, and told him that he was afflicted by some hypochondriac affection, for which he ought to have advice, and asked him whether he had ever been treated as an insane person? He said he had not, and endeavoured to persuade me that he was in the enjoyment of sound mind and health. After some further conversation, I advised him to consult with his friends upon the subject, and suggested the propriety of seeing some medical gentleman. He did not appear to be satisfied with what I stated to him, and he then went away. I immediately sent

for the prisoner's father, in order to let him know what had taken place, but he did not wait upon me, and I took no further steps in the affair. I felt no doubt at the time that the prisoner was labouring under some species of insanity."

The Reverend Alexander Turner, minister of the parish of Gorbals, near Glasgow, repeated the same dismal complaints, the wailings of a troubled spirit, of being haunted and persecuted. "I observed that he appeared to be labouring under a very great degree of excitement, which was evident from large drops of perspiration on his brow. I certainly thought that he was insane. In consequence of that interview, I called upon his father a day or two afterwards, and told him that I thought he ought to be put under restraint."

A shrewd observer, Mr. Hugh Wilson, the Commissioner of Police at Glasgow, not likely to be soon imposed upon, told forcibly some particulars of interviews which had led his mind to the irresistible conclusion that M'Naughton was, in Scottish phrase, *daft*. "I saw, by his anxious manner, that he had something to communicate. I asked him what he wanted, and he said that he had come to consult me on a very delicate matter; and, after some hesitation, said that he was the object of some persecution, and added, that he thought it proceeded from the priests at the Catholic chapel in Clyde Street, who were assisted by a parcel of Jesuits. I asked him what they did to him, and his reply was, that they followed him wherever he went, and were never out of his sight, and when he went into his bedroom he still found them with him. He was perfectly calm and collected when he first came in, but when he began to talk about the persecution, he became very much excited; and I then thought that he was *daft*. I saw that he was extremely anxious upon the subject, and therefore told him to call again on the following Tuesday, and I would see what could be done for him. He then went away. When I again saw him, I told him that I had seen Miller, who said it was all nonsense and there was nothing in it; to which the prisoner replied that Miller was a bad one, that he saw it in his face, and he wanted to deceive both him and me. Having again run on about the Catholics and the

Jesuits, he went away. In two or three days he again called, and alluding to the subject, said, the Tories had joined with the Catholics, that he could get no rest either night or day, through their persecuting conduct, and he felt quite sure they would throw him into a consumption. At that interview I told him he had spoilt the scheme which I had planned for the purpose of finding out his persecutors, at which he appeared to be very much disappointed. I desired him not to look either to the right or to the left, and, if possible, let them see that he did not observe them. He said he would do so. After that interview, I did not see him for three or four months, when he again came to me and said he was worse than ever. I told him he should get out of their way. He said he had been to Boulogne, and asked me if I knew the watch-box on the Custom-house quay, there? I told him I did. He then said that as soon as he landed, he saw one of his spies peep from behind it, and added, that it was no use going further into France, and spending his money, when he could get no relief. He appeared then worse than ever, and I advised him to go into the country and amuse himself by working, and not to think anything more about it; but he said it was no use going there, as they would be sure to follow him. I had several other interviews with him, and the last time I saw him was about the month of August last, when he made the same sort of complaint, and the delusion then appeared to be stronger in his mind than ever."

A sort of vague suspicion seems to have crept into the mind of the Solicitor-General, that the police-officer might have been biassed by political considerations; but the notion led to nothing.

"The office I hold is not one of a political character. I have not canvassed the prisoner for his vote within the last twelve months. I have solicited his vote, but that was three or four years ago. When I saw him in August last, he was very much excited. He said the police, the Jesuits, the Catholic priests, and Tories were all leagued against him."

These remarkable facts proving a series for years of incoherent suspicions, darkening and strengthening as the mind

became more extensively diseased, laid a broad foundation for medical theories, and upon them was built, by the nine physicians and surgeons who confirmed each other's theories, a goodly superstructure of undoubted insanity. Had the workings of the troubled brain been as distinctly visible to the eye as the labours of bees seen through a glass hive, they could not have held the fact to be more demonstratively proved. Positive beyond the possibility of mistake, and infallible as theologians, they explained all that might appear without the aid of science inexplicable, and proved, as if they were stating undoubted facts, an irresponsible delusion. Dr. E. T. Monro, who had devoted himself for thirty years to the subject of lunacy, and had visited the prisoner in company with two physicians selected by government, Doctors Sutherland and Bright, to ascertain his state of mind, stated the substance of the conversation, which he had committed to writing, and his own positive opinion. "In reply to the questions put to him, the prisoner said that he was persecuted by a system or crew at Glasgow, Edinburgh, Liverpool, London, and Boulogne. That this crew preceded or followed him wherever he went; that he had no peace of mind, and he was sure it would kill him; that it was a grinding of the mind. I asked him if he had availed himself of medical advice? He replied, that physicians could be of no service to him; for if he took a ton of drugs it would be of no service to him; that in Glasgow he observed people in the streets pointing at him, and speaking of him. They said, 'That is the man, he is a murderer, and the worst of characters.' That everything was done to associate his name with the direst of crimes. He was tossed like a cork on the sea, and that, wherever he went, in town or country, on sea or shore, he was perpetually watched and followed. At Edinburgh he saw a man on horseback watching him. That another person there nodded to him, and exclaimed, 'That's he;' that he had applied to the authorities of Glasgow for protection and relief. His complaints had been sneered and scouted at by Sheriff Bell, who had it in his power to put a stop to the persecution, if he had liked. If he had had a pistol in his possession, he would have shot Sheriff Bell dead as he sat in the court-

house; that Mr. Salmond, the Procurator-Fiscal, Mr. Sheriff Bell, Sheriff Alison, and Sir Robert Peel, might have put a stop to this system of persecution if they would; that, on coming out of the court-house, he had seen a man frowning at him, with a bundle of straw under his arm; that he knew well enough what was meant; that everything was done by signs; that he was represented to be under a delusion; that the straw denoted that he should lie upon straw in an asylum; that, whilst on board the steamboat on his way from Glasgow to Liverpool, he was watched, eyed, and examined closely by persons coming near him; that they had followed him to Boulogne on two occasions; they would never allow him to learn French, and wanted to murder him. He was afraid of going out after dark, for fear of assassination; that individuals were made to appear before him, like those he had seen at Glasgow; that he had seen paragraphs in *The Times* newspaper containing allusions which he was satisfied were directed at him; he had seen articles also in the *Glasgow Herald*, beastly and atrocious, insinuating things untrue and insufferable of him; that, on one or two occasions, something pernicious had been put into his food; that he had studied anatomy to obtain peace of mind, but he had not found it. That he imagined the person at whom he fired at Charing Cross to be one of the crew — a part of the system that was destroying his health. He observed that, when he saw the person at Charing Cross at whom he fired, every feeling of suffering which he had endured for months and years rose up at once in his mind, and that he conceived that he should obtain peace by killing him."

Mr. Cockburn. Do you think that your knowledge of insanity enables you to judge between the conduct of a man who feigns a delusion, and one who feels it? — I do, certainly.

Do you consider, Dr. Monro, that the delusions were real or assumed? — I am quite satisfied that they were real. I have not a shadow of a doubt on the point.

Supposing you had heard nothing of the examination which took place in Newgate, but only the evidence which has been adduced in court for the last two days, would you then say that the prisoner was labouring under a delusion? — Most

certainly. The act with which he was charged, coupled with the history of his past life, left not the remotest doubt on his mind of the presence of insanity sufficient to deprive the prisoner of all self-control. He considered the act of the prisoner, in killing Mr. Drummond, to have been committed whilst under a delusion; the act itself he looked upon as the crowning act of the whole matter — as the climax — as a carrying out of the pre-existing idea which had haunted him for years.

Is it consistent with the pathology of insanity, that a partial delusion may exist, depriving the person of all self-control, whilst the other faculties may be sound? — Certainly. Monomania may exist with general sanity. He frequently knew a person insane upon one point exhibit great cleverness upon all others not immediately associated with his delusions. He had seen clever artists, arithmeticians, and architects, whose mind was disordered on one point. An insane person may commit an act similar to the one with which the prisoner is charged, and yet be aware of the consequences of such an act. The evidence which he had heard in court had not induced him to alter his opinion of the case. Lunatics often manifested a high degree of cleverness and ingenuity, and exhibited occasionally great cunning in escaping from the consequences of such acts. He saw a number of such cases every day.

The cross-examination of Dr. Monro placed in still clearer light his positive conviction that he could ascertain the nicest shade of insanity, — that the shadowy hues of eccentricity dissolving into madness could be palpably distinguished.

Solicitor-General. Do you mean to say, Dr. Monro, that you could satisfy yourself as to a person's state of mind by merely going into a cell and putting questions to him? — In many instances I can; I will mention a case in point. A short time back I was called in to examine a man who was confined in Newgate under sentence of death. It was thought that he had feigned insanity. After an attentive examination, in conjunction with Mr. M'Murdo, I at once detected that his insanity was assumed, and such turned out to be the fact. I had the satisfaction afterwards of hearing

that the man himself confessed prior to his execution that he had feigned insanity.

I wish to know whether your skill would enable you to ascertain the nature of the delusion under which the prisoner was labouring without seeing the depositions taken in his case?—Certainly. I have formed my opinion from an examination of the prisoner personally, in conjunction with the depositions.

Is it not necessary to examine the bodily symptoms in these cases; for instance, the pulse?—Yes, sometimes. I did not feel his pulse, neither did I lay much stress upon the appearance of his eye.

Do you always assume that the party tells you what is passing in his mind?—Not always.

What do you mean by insanity? Do you consider a person labouring under a morbid delusion of unsound mind?—I do.

Do you think insanity may exist without any morbid delusion?—Yes; a person may be imbecile; but there is generally some morbid delusion; there are various shades of insanity. A person may be of unsound mind, and yet be able to manage the usual affairs of life.

May insanity exist with a moral perception of right and wrong?—Yes; it is very common.

A person may have a delusion and know murder to be a crime?—If there existed antecedent symptoms, I should consider the murder to be an overt act, the crowning piece of his insanity. But if he had stolen a 10*l.* note it would not have tallied with his delusion.

But suppose he had stolen the note from one of his persecutors?

(Dr. Monro's answer was not heard, owing to the laughter which followed the Solicitor-General's observation.)

Dr. Monro said a delusion like M'Naughton's would carry him quite away. He thought a person might be of unsound mind, labour under a morbid delusion, and yet know right from wrong. In many respects this was the case.

Have you heard of what is called moral insanity? Have you read the works of M. Marc?—I understand what mono-

mania means. It is attended by an irresistible propensity to thieve or burn, without being the result of particular motives.

Re-examined by Mr. Cockburn. You said, Dr. Monro, that a person might labour under a particular form of insanity without having his moral perceptions deranged. For illustration—a man may fancy his legs made of glass. There is nothing in that which could affect his moral feelings? — Certainly not.

You have not the slightest doubt that M'Naughton's moral perceptions were impaired?—No.

Sir Alexander Morrison, who had seen the prisoner with Dr. Monro, attested his conviction, as a matter of certainty, that M'Naughton was not responsible for his acts. By an excess of lenity the counsel for the prosecution permitted these scientific witnesses to depart from the ordinary rules of evidence, to give their own conclusions from the facts proved, and usurp the province of the jury.

The physician having averred that M'Naughton was insane, Mr. Clarkson asked without objection,—

After having heard the evidence adduced that day in court, has your opinion undergone any alteration?—I am still of the same opinion, that the prisoner was insane at the time he committed the act with which he is charged.

The prisoner's morbid delusions consisted in his fancying himself subject to a system of persecutions?—Yes; that was the peculiar cause of his insanity.

What effect had this delusion upon his mind?—It deprived the prisoner of all restraint or control over his actions.

Do you speak with any doubt upon the point?—Not the slightest.

Mr. M'Clure, surgeon, of Harley Street, was equally positive. "I consider, when he fired at Mr. Drummond, at Charing Cross, he (the prisoner) was suffering from an hallucination which deprived him of all ordinary restraint."

Mr. Bodkin. Do you consider that his moral liberty was destroyed?—I do.

Dr. W. Hutchenson enforced with equal peremptoriness his theory that delusions had deprived the prisoner of all control over his actions; and that the deed of murder flowed

immediately from the delusions. He was cross-examined by Sir William Follett.

Do you mean to say that the delusion prevented the prisoner from exercising any control over his actions?—I said that the act was the consequence of the delusion, which was irresistible. The delusion was so strong that nothing but a physical impediment could have prevented him from committing the act. He might have done the same thing in Glasgow if the disease of the mind had reached the same point.

From what period do you date his insanity?—From the time when M'Naughton called upon the commissioner of police, Mr. Wilson, for protection.

Divesting your mind of all the evidence you have heard, and all the facts connected with the case, and forming your judgment on the examination to which you subjected the prisoner, what would be your opinion of his state of mind?—I should have no hesitation in certifying that he was a dangerous lunatic.

Nothing which you have heard during the last two days has altered your mind on the subject?—My opinion of the prisoner's insanity is the same.

Re-examined by Mr. Cockburn. When patients exhibit symptoms similar to those which the prisoner manifested, they are generally, I believe, placed under restraint?—Yes. Such symptoms often gradually develop themselves, whereas many have these delusions for some time, and are harmless, and then they may suddenly impel them to the commission of crime. I have known cases of that kind.

Each physician and surgeon, as he stepped into the witness-box, seemed anxious to surpass his predecessor in the tone of decision and certainty; each tried to draw the bow of Monro, and shoot, if possible, still further into empty space. Dr. Crawford, Mr. Aston Key, and Mr. Winslow, repeated the same idea in different forms of speech, the last speaking with the most unqualified assurance. "I have not the slightest hesitation in saying that the prisoner is insane, and that he committed the offence in question whilst afflicted with a delusion under which he appears to have been labouring for a considerable length of time."

Nine medical witnesses had now spoken with a wonderful unanimity of opinion, and the Court surrendered at discretion.

Chief Justice Tindal. Mr. Solicitor-General, are you prepared, on the part of the Crown, with any evidence to combat this testimony of the medical witnesses who now have been examined? because we think, if you have not, we must be under the necessity of stopping the case. Is there any medical evidence on the other side?

Solicitor-General. No, my Lord.

Chief Justice Tindal. We feel the evidence, especially that of the last two medical gentlemen who have been examined, and who are strangers to both sides, and only observers of the case, to be very strong, and sufficient to induce my learned brothers and myself to stop the case.

Solicitor-General. Gentlemen of the Jury, after the intimation I have received from the Bench, I feel that I should not be properly discharging my duty to the Crown and to the public, if I asked you to give your verdict in this case against the prisoner. The Lord Chief Justice has intimated to me the very strong opinion entertained by himself and the other learned judges who have presided here to-day, that the evidence on the part of the defendant, and more particularly the evidence of the medical witnesses, is sufficient to show that this unfortunate man, at the time he committed the act, was labouring under insanity; and, of course, if he were so, he would be entitled to his acquittal. I was anxious, however, to say, on the part of the Crown, that they have had no object whatever but the attainment of public justice; and I believe I am right in saying that, on the part of the prosecution, every facility has been given to the defence. There is no wish, there can be no wish, on the part of the public prosecutor, but that the ends of public justice shall be attained; and, certainly, when in the streets of this metropolis a crime of this sort was committed, it was incumbent on those who have the care of the public peace and safety to have the case properly investigated. The safety of the lives and persons of all of us requires that there should be such an investigation. On the part of the Crown, I felt it my duty

to lay before you the evidence we possessed of the conduct of this young man. I cannot agree with the observations my learned friend has made on the doctrines and authorities that have been laid down in this case, because I think those doctrines and authorities are correct law; our object being to ascertain whether at the time the prisoner committed the crime he was at that time to be regarded as a responsible agent, or whether all control of himself was taken away? The Lord Chief Justice I understand to mean to submit that question to you. I cannot press for a verdict against the prisoner. The learned judge will submit the case to you, and then it will be for you to come to your decision.

Chief Justice Tindal. Gentlemen of the Jury, in this important case, which has excited very great anxiety during the two preceding days, the point I shall have to submit to you is, whether, on the whole of the evidence you have heard, you are satisfied that at the time the act was committed, for the commission of which the prisoner now stands charged, he had that competent use of his understanding as that he knew that he was doing, by the very act itself, a wicked and a wrong thing? If he was not sensible at the time he committed that act, that it was a violation of the law of God or of man, undoubtedly he was not responsible for that act, or liable to any punishment whatever flowing from that act. Gentlemen, that is the precise point which I shall feel it my duty to leave to you. I have undoubtedly been very much struck, and so have my learned brethren, by the evidence we have heard during the evening, from the medical persons who have been examined as to the state of the mind of the unhappy prisoner—for unhappy I must call him in reference to his state of mind. Now, Gentlemen, I can go through the whole of the evidence, and particularly call back your attention to that part of it to which I at first adverted, but I cannot help remarking, in common with my learned brethren, that the whole of the medical evidence is on one side, and that there is no part of it which leaves any doubt on the mind. It seems almost unnecessary that I should go through the evidence. I am, however, in your hands; but if, on balancing the evidence in your minds, you think the

prisoner capable of distinguishing between right and wrong, then he was a responsible agent, and liable to all the penalties the law imposes. If not so, and if in your judgment the subject should appear involved in very great difficulty, then you will probably not take upon yourselves to find the prisoner guilty. If that is your opinion, then you will acquit the prisoner. If you think you ought to hear the evidence more fully, in that case I will state it to you, and leave the case in your hands. Probably, however, sufficient has now been laid before you, and you will say whether you want any further information.

Foreman of the Jury. We require no more, my Lord.

Chief Justice Tindal. If you find the prisoner not guilty, say on the ground of insanity, in which case proper care will be taken of him.

Foreman. We find the prisoner Not Guilty, on the ground of insanity.

THE TRIAL

OF

ALEXANDER ALEXANDER,

CLAIMING THE TITLE OF

EARL OF STIRLING,

FOR THE CRIME OF FORGERY,

BEFORE THE HIGH COURT OF JUSTICIARY AT EDINBURGH,

On Monday, April 29. 1839, and five following Days.

Judges present: Lord *Meadowbank*, Lord *Mackenzie*, Lord *Moncreiff*, Lord *Medwyn*.

Counsel for the Crown: The Lord Advocate (*Rutherford*), the Solicitor-General (*Ivory*), Cosmo *Innes*, and Robert *Handyside*, Esquires, Advocates-Depute.

Counsel for the Pannel: Patrick *Robertson*, Adam *Anderson*, and John *Inglis*, Esquires, Advocates.

POPULATION, science, and crime have increased in the British Isles within the second quarter of the present century more rapidly than at any former period; the two last elements of civil society bearing, it must be confessed, more than a geometrical ratio to the preceding. Without attaching too much importance to that most profound of prose romances, the ponderous volume of statistics, there can be no doubt that offences against property have unduly multiplied —that the skill in overtaking and detecting guilt can only be paralleled by the ingenious devices with which unscrupulous artificers of fraud seek to break with impunity the sixth and eighth commandments. The first use to which the electric telegraph on the Great Western Railway is said to have been applied, was to announce the departure of a noted pickpocket in one of the first-class carriages for Slough. In

the two most appalling cases of murder that have recently shocked and disturbed society, that of Tawell and the Mannings, the tell-tale wires, seeming in their communication of intelligence to 'annihilate time and space,' formed the medium of instant arrest to the guilty fugitives. But even these and other modern inventions have been made conductors of evil. The railway carriage has been found to furnish a convenient opportunity for committing murder successfully; and in more subtle modes of poisoning, in novel arts of coining, and more ingenious designs of forgery, craft has baffled or perverted skill. There has been a marked increase indeed in all the crimes which require superior intelligence, rather than brute force, for their successful accomplishment, and which can only be effected by the misapplied union of talent and education. * The abolition of the punishment of death for all crimes against property may have tempted persons of comparative refinement, of cool head and callous heart, to adventure on forbidden ways of enriching themselves at the expense of their neighbours, when failure and detection would not involve their personal safety. Even were this result of late merciful changes in our criminal code certain instead of conjectural, it should not be deplored, for the rights of property are subordinate to those of life, and wealth is secured at too dear a cost if purchased by man adjudging fellow man to death.

Some of the comparatively modern cases, which attest the rise of refined profligacy, deserve a passing notice, both on account of the cleverness of the felonies, and the station of those who committed them. Only a few years have passed since the Rev. Dr. William Bailey addressed attentive congregations in London, and was followed as an attractive preacher. He chanced to read in the newspapers that a miser of the name of Smith had died worth several hundred thousand pounds, that he had no near relations, and could scarcely write his name. The cupidity of Dr. Bailey was excited; he procured copies of his signature, and in due time forwarded to the executors an I. O. U. and promissory note, both purporting to be signed by Smith, to Miss Ann Bailey, of 45, Upper Arthur Street, Belfast, for 2875*l.*, "for value received by me in cash advanced by her on loan to me. Witness: William Bailey, Clerk, LL. D.,

minister of St. Peter's, Queen Square, Westminster." The claim having been disputed, for the name of the supposed creditor had never been heard of before, an action was brought in the name of Miss Bailey, and her brother, the Rev. Doctor, stepped firmly into the witness-box. He produced an account-book in which the various loans from his sister to the dead man were duly entered up, and deposed clearly to his signing the I. O. U. in his presence, in the vestry-room of St. Peter's, just before divine service, on the evening of Thursday, August 12th, at seven o'clock. His tale was discredited, the writings were impounded, and Dr. Bailey committed on the charge of forgery. At his trial it was clearly proved that, at the time stated, the evening of August 12th, the miser Smith was in company with a builder in the Hampstead Road, who remembered the day, because it was his wedding-day, and who continued with the deceased for two hours. But more remarkable evidence was adduced. An Irishman, who sold fruit in the Brompton Road, had been stopped by the Doctor, and asked if he would become a witness. "I looked at him," said the man, "and *admired* what he meant; but said 'yes,' to see what his motive was." He gave the wondering witness a shilling, and told him to call at his house next day, when he handed to him a paper to read and learn by heart, to the effect that he had seen Smith go into the vestry and come out again in five minutes, followed by Dr. Bailey, in his surplice, on the evening of the 12th August. This paper was preserved by the man, and exhibited by him in court. He was then taken to the Exchequer coffee-house, and signed his deposition to these facts, but when sent with a boy to Westminster Hall to swear to the truth of it, his flesh, he said, crawled on his bones, and he ran away. Another unhappy witness, a reduced tradesman, had been assured by the Doctor, that his sister was in danger of being robbed of 3000*l.* unless he consented to swear that he had seen Smith at his (Dr. Bailey's) house and in the vestry-room, and for a bribe of 30*l.* he confessed that he had sworn falsely to these facts. His instructions to both witnesses what to swear, in Dr. Bailey's handwriting, were produced at his trial. As a last forlorn effort at escape, he called

several unfortunate women, discharged servants, milliners, and others, whom he had tutored to swear to different portions of this fabulous transaction. Their confusion was too great, on being pressed with questions from the secret memoranda which were found in Dr. Bailey's desk, and their contradictions too self-evident, to make the jury even fancy a doubt. Though several most respectable witnesses deposed to his eminence as a preacher, and general estimation for moral worth, the wicked divine was found guilty and transported for life. How venial in comparison with his double guilt, yet how sad in contrast the fate, looming in the distance, the sin and punishment of Dr. Dodd!

Shortly after the conviction of this clerical forger, the large amount of unclaimed dividends in the Bank of England attracted the attention of some daring conspirators, and by suborning parties to represent the persons named in the dividend warrants, and forging their handwriting, their ingenuity was rewarded with ample plunder, but quickly detected. One of the convicted parties, Barber, who had borne the character of a respectable attorney, has since received a free pardon; but, whether he was rightly condemned or not, of the guilty participation of the others, and of a most ingenious system of successful knavery long persevered in, there can exist no doubt. Another solicitor, retired from practice, was charged at the Central Criminal Court with forging a will, by which his wife became entitled to large real estates. The testator had put his name to an agreement, in pencil, for the partition of some land in London. The paper on which his signature was written had been covered with plans of the property to be divided, in pencil. All these marks were carefully rubbed out, and a supposed will written over them, to which the name Barton Panton appeared subscribed. The real signature remained, but to a wholly different subject-matter. The supposed fraudulent utterer of this will was acquitted, but the will itself was afterwards set aside as an imposture by the Privy Council. Even the highest court of appeal, the House of Lords, has been profaned with an audacious forgery. One of the claims to the Tracy peerage was sought to be established by the production of a spurious tombstone. Acting on the ingenious hint afforded by the

accomplished author of Ten Thousand a Year, in fabricating a false monument, the clever pretender manufactured a mural tablet, with all the signs of antiquity and age, and convenient dates. But even this impudent fraud is exceeded by the series of fabrications laid to the charge of the *soi-disant* Earl of Stirling, nineteen in number. In the height of his pretensions, and the ability with which they were supported, he has soared beyond all competitors, and has left a name unrivalled in imposture since the days of Perkin Warbeck. A brief narrative of his fictitious pedigree and supposed ancestor will enable the reader to follow with more interest the details of his very curious and instructive trial.

Sir William Alexander, a well-known poet and courtier in the reign of James I., and Secretary of State for Scotland, obtained from that monarch a grant of the territory of Nova Scotia by a charter dated in September, 1621. The object of this grant was the colonisation of an hitherto unsettled country; and Sir William was empowered to allocate portions of this vast tract of land to a limited number of adventurers, who were to have the title of knights baronets, and certain rank and privileges carefully defined. On the 2d of February, 1628, he received an additional grant from King Charles I. of the province since called Canada; and was raised to the peerage by the title of Viscount Stirling. On the occasion of Charles's coronation he was created Earl of Stirling, Viscount Canada, and died at London in February, 1640.

By his wife, Janet, daughter of Sir William Erskine, he had issue seven sons and two daughters: —

1. William, Viscount Canada, who died before his father, in 1638.

2. Sir Anthony, who died without issue in 1637.

3. Henry, afterwards third earl.

4. John, who married Agnes Graham, heiress of Gartmore, by whom he had only one daughter. It will be observed, in the course of the proceedings connected with the following trial, that it was from the issue of an alleged second marriage of this person that the pannel claimed to be descended.

The three other sons died without issue.

II. William, the only son of William, Viscount Canada, above mentioned, succeeded his grandfather as second Earl of Stirling in February, 1640. He was then a child of about eight years old, and he did not survive above three months.

III. He was succeeded by his uncle Henry, the third son of the first earl. The affairs of the family fell into great confusion after the first earl's death, and the Scotch estates were entirely lost by the process of his creditors.

IV. Henry, the fourth earl, died in 1690, whose son

Henry, the fifth Earl of Stirling, married, but left no issue. He died 4th December, 1739, and the title became dormant. With the death of the first earl the connection of the family with Nova Scotia and Canada appears to have terminated; and between the treaty of St. Germains in 1632, and the final conquest of the present British possessions in America by General Nicholson in 1710, confirmed by the treaty of Utrecht in 1713, these provinces changed masters several times, and were the subject of various negotiations between England and France. It is not necessary here to discuss the question, whether any descendant of the first Earl of Stirling, even supposing his title to be clearly established, would be competent still to assert a right to these colonial possessions. Twenty years after the death of the last earl, a claimant of the title appeared in the person of William Alexander, Surveyor-General of the state of New Jersey, and afterwards a general in the American army. He visited England in 1759–60, and employed in investigating and promoting his claim the well-known Mr. Andrew Stewart, the agent of the family of Hamilton, but failed to establish it.

The next claimant of the peerage was the pannel, son of William Humphrys, Esquire, of the Larches, a respectable merchant in Birmingham, who, having gone to France on business during the short peace of 1802, was there detained, with the other English visitors, by Napoleon, and died at Verdun in 1807. His son had accompanied him, and was also detained a prisoner at Verdun till the peace of 1814. We are not informed whether this visit to France was the cause or the result of the derangement and ruin of the family affairs; but it appears that from that time the competency

or affluence which they had hitherto enjoyed entirely disappeared.

It is not known how the pannel supported himself in France. In 1812, he married Fortunata Bartoletti, a Neapolitan lady, and an intimate acquaintance of Mademoiselle Le Normand, the celebrated Parisian sybil. By her he was introduced to the prophetess, who read his destiny, and foretold that he should encounter many trials and distresses, but should at length arrive at great honours.

In 1814, he returned to England, and soon afterwards settled at Worcester, first, it is believed, as assistant, and afterwards as master, of a school which was called Netherton House.

In the year 1815, he appears to have, for the first time, made known his claim to be descended from, and to represent the ancient Earls of Stirling, through his mother, Hannah, the youngest child of the Rev. John Alexander, a Presbyterian clergyman at Dublin. On that occasion Mr. Corrie, his Birmingham agent, declined to take up his claim, from ascertaining that he was unprovided with any titles or documents to support it. He soon, however, found other agents who entertained a more favourable opinion of his case; and in 1823 he was in close correspondence with Mr. Thomas Christopher Banks, the author of a work on Dormant and Extinct Peerages. In the beginning of the following year, the pannel applied for, and obtained, the King's license to take the name of Alexander, without, however, stating in his petition that his object was to claim connection with the Earls of Stirling, and procured himself to be served lawful and nearest heir male of Hannah Alexander before the Bailies of Canongate, a form of course. He then most prematurely and unadvisedly assumed the title of Earl of Stirling and Dovan, and designated his mother Countess. In 1831 he granted to his man-at-arms Banks, in requital of his services, 16,000 acres of land in Canada, and created him a baronet, in the terms of a clause in the charter of 1621; issued a proclamation to the baronets of Nova Scotia, informing them of important rights and interests of which they were not aware. In July, 1831, he published a pros-

pectus, offering for sale grants of land in such quantities as the cupidity or ambition of parties might require.

"NOVA SCOTIA, NEW BRUNSWICK, AND CANADA.—Hereditary lieutenancy office of the Lord Proprietor for sale of grants and locations of land, &c., 53, Parliament Street. The Hereditary Lieutenant would have no objection to encourage and give every countenance to individuals who might be disposed to form a company, and would himself take one-tenth of the shares of which such company might think it desirable that it should consist."

On the 29th of August, 1831, he petitioned for leave to do homage at the coronation, as Hereditary Lieutenant of Nova Scotia. These proceedings could not be carried on without incurring considerable expense. Agents actively engaged in England, Ireland, Scotland, and America, were to be paid, and the expense of complicated litigation defrayed; while, at the same time, the pannel had renounced the occupation by which he had supported himself since his return from France. His law proceedings, however, joined to the confident statements published by him from time to time of his certainty of success, and the very notoriety derived from his frequent assertion and exercise of the rights of Peerage, were all serviceable in enabling him to raise money. Accordingly, though he was reduced in 1829 to the greatest distress, he soon afterwards left Worcester, and established his family in London, where they remained for several years, living in an expensive style. It is in evidence that he raised by one agent loans to the amount of 13,000*l.* in about eighteen months; and for the more convenient arrangement of such transactions, he opened an office in Parliament Street, and issued advertisements for the sale of territories in Canada, and debentures on his American possessions. He sent in a protest to Earl Grey against all interference by colonial governments with his hereditary rights, and presented a petition in 1832 to the House of Commons against the application for the New Brunswick Company Bill as interfering with the territories of the Earl of Stirling and Viscount Canada. A select committee was appointed in March, 1832, on the motion of the Earl of Rosebery, to inquire into the

evils arising from the practice of persons claiming dormant peerages voting at elections of Scottish representatives, and to prevent the facility with which persons could assume a title without authority, and thus lessen the character and respectability of the peerage in the eyes of the public. The *soi-disant* earl voted at all the elections of Scottish peers since 1825, twice without protest, both in person and by signed lists, and pleaded successfully in the Common Pleas his privilege as a peer from arrest.—(*Bingham's Reports*, vii. 55.) At length, after long forbearance, the Crown lawyers found themselves constrained to pluck the plumage of this superb aspirant to an earl's coronet, who had played his part as well as Abou Hassan, when in his dream he acted the sovereign.

After several motions for delay, the pannel tardily produced in court certain newly recovered documents, in support of his services. The circumstances of suspicion attending them, induced the court to order the unusual proceeding of a judicial examination of the pannel, as to the means by which they had come into his possession. He was subsequently apprehended on a charge of forgery, and judicially examined by the sheriff. He was committed for trial; and it was appointed for the 3rd of April, 1839. On that day his counsel moved for delay, which was granted, and the trial ultimately took place on the 29th of April.

Few cases in the criminal court ever excited a greater interest, especially among the higher classes of Edinburgh. This may, perhaps, be attributed principally to the unusual complexion of the charge, the number of foreign witnesses, the interesting nature of the evidence, and the high legal talent employed on both sides. But it must also be partly traced to the respectable position which the accused had held in society, and to the high character for integrity and honour which it was known he would receive from several of his friends and acquaintances, one of whom — himself a distinguished officer, occupying a high rank in the service — evinced the sincerity of his attachment by sitting, during the whole course of the trial, in the dock beside the prisoner. The evidence lasted three days; and two more were occupied by the speeches of counsel, and the charge of the presiding

judge. During the whole of this time, the court was crowded in every part. The public feeling appears to have been decidedly in favour of the accused, and was more than once manifested in a manner scarcely consistent with judicial decorum.[1]

This gentleman could not be Earl of Stirling, unless there was once some patent of nobility which might descend to him. The only two patents extant, in favour of the family of Stirling, were, one dated 4th September, 1630, and the other dated 14th June, 1633; which created Sir William Alexander, Viscount Stirling, Lord Alexander of Fullibody, "giving and granting to him and his heirs male, bearing the surname and arms of Alexander, the title, honour, rank, and dignity of a viscount of our said kingdom of Scotland." The second patent added the coronet of an earl. Under these patents, the pannel could support his title only by making out that he was *heir male* of the original Earl of Stirling; but this he did not pretend. The excerpt on which he founded his claims, alleged to be a forgery, pretended to be taken from a charter which operated a *change* in the destination, and was a grant from the crown to William, first Earl of Stirling, "and the heirs male of his body; *whom failing, to the eldest heirs female, without division, of the last of such heirs male.*" The Crown officers contended that this was not a genuine but a forged document, and made three startling propositions: — that it was not the excerpt of any charter; that there never was such a charter; that there never could have been such a charter. Each of these positions was proved by internal and historical evidence. At the close of the document appeared the words, "Gratis, per Signetum" (free by the signet), with an attestation clause: "In testimony whereof, to this our present charter we have commanded our great seal to be appended. Witnesses: the most Reverend Father in Christ, and our beloved Counsellor, John, by the mercy of God Archbishop of St. Andrew's, Primate and Metropolitan of our kingdom of Scotland, *our Chancellor*," &c. Now these two things could not possibly co-exist in any genuine document

[1] Report of the trial by Mr. Swinton, and also that by Mr. Turnbull, advocates.

whatever known to the law of Scotland. This testing clause was the form in which all *completed charters* concluded; but in no preceding stage, neither in the signature, nor in the precept on which a charter proceeds, is there any such clause. This excerpt, therefore, could not have been taken from a signet precept, nor from a privy-seal precept. If taken from any document, it must have been taken from a completed charter. But then there were the other words, "Per Signetum," which are never to be found in any perfected charter at all. The occurrence of these words, therefore, proved perfectly fatal to the notion, that the excerpt in question could ever have been taken from a completed charter. The warrant, antiquaries explained, is first directed to the privy seal, where it is recorded, and a second precept is issued from the privy seal to the great seal. Then comes the completed charter itself, which is prepared in chancery, and passes the great seal. Now, at every one of these stages, the several writs bear reference in their close to the warrant in the preceding stage, on which they proceed. Accordingly, it is in the precept to the privy seal alone that these words, "Per Signetum," i. e. "by warrant of the signet," could be used, because it is the warrant for such a precept alone that ever passes the signet. The document was perfectly anomalous, containing on the one hand words which are to be found only in a completed charter, and which could not exist in a privy-seal precept, namely, the testing clause; and on the other hand, bearing certain other words, which are never to be found in a completed charter, and which could only exist in a privy-seal precept, namely, "Per Signetum." On the strength of these conclusive elements of intrinsic evidence alone, it was submitted that this could not be an excerpt or copy of any authentic writ of any description whatever known to the law of Scotland. But when submitted to the keen scrutiny of antiquarians, other strange anomalies started to light. The date of this document was 1639; yet not the slightest trace of its existence could be found, either in the records of the great seal or in those of the other seals, in 1639, though there did exist a variety of other charters of contemporaneous dates, — the signatures, and the pre-

cepts, and the charters themselves, all duly recorded in the proper offices. Searches were made in the record of the great seal, in that of the privy seal, in the comptroller's register in exchequer, in the bundles of signatures in the signet office, — in the register of signatures itself; but nowhere, in any of these records, could there be discovered the most remote vestige of such a document.

There was another very peculiar circumstance connected with this alleged spurious excerpt. At its commencement stood the words "Reg. Mag. Sig. Lib. 57," meaning register of the great seal, fifty-seventh volume. This marking was one of a class, proved by Mr. Thomson, the author of it, and Mr. Macdonald, his assistant, to have commenced *only in* 1806, when the records were rebound and the titles of the whole made uniform, in order to get rid of the loose and discordant mode of referring to them formerly in use. In all the law books of a date previous to 1806, no such mode of reference was ever used by our legal writers. So decidedly modern was this marking, that in a book of practice which had passed through two editions, in the last only, and that published since 1806, was the marking in question to be found. Never was the truth of the aphoristic line more strikingly proved,

"A little learning is a dangerous thing!"

Rarely have the tests of real learning been more successfully applied, or attended with more convincing results. Another most important branch of proof, the historical evidence relating to the pretended witnessing of this charter by Archbishop Spottiswoode, appeared equally conclusive. The witnesses to the forged document were given thus, if read from the English translation: — "Witnesses, the most revered Father in Christ, and our well beloved Councillor, John, by the mercy of God, Archbishop of St. Andrew's, Primate and Metropolitan of our kingdom of Scotland, our Chancellor, our well beloved Cousins and Councillors James, Marquis of Hamilton, &c., the *7th day of the month of December, in the year of God* 1639, *and of our reign the* 15*th year.*" It was in the capacity of chancellor of the kingdom, and, as such, keeper of the greatseal, that the Archbishop of St. Andrew's was made an

official witness to this charter; and, no doubt, while Archbishop Spottiswoode held that high office, his name would be found in the records as an official witness to all charters from the Crown, passing the great seal of Scotland. But on the 7th of December, 1639, the archbishop was neither chancellor nor alive; and so early as the 13th of November, 1638, it had "pleased his Majestie, upon diverse good considerations, to committ the charge and keepinge of his Great Seale to his dearest cousine and counsellor the Marquis of Hamilton, his Majestie's Commissioner, till his Majestie shall be graciouslie pleased to declare his further will and pleasure thereanent," &c. So that Archbishop Spottiswoode had thus ceased to be chancellor more than a year before the date of this pretended charter, which he was, notwithstanding, made to witness in that official character. The commission by which he was superseded endured till 1641, when Lord Loudon succeeded. The interregnum is not noticed in several Scottish histories. The inscription on the archbishop's tombstone, as given by a contemporaneous writer, proves *that he died on the 26th of November*, 1639. A mistaken translation of the Latin epitaph which is given in Crawfurd's life, represented the date of death to be the 27th of December. Other Crown charters of the same date, — one in favour of the city of Edinburgh, dated 11th December, 1639, — contained the names of the Marquis of Hamilton and other living witnesses, but no mention of the deceased archbishop. The learned could detect other latent marks of fabrication, proving the prentice hand of one not thoroughly skilled in the craft. The deed purported to be a grant, among others, of lands and territories in New England; a grant which, as it gives an estate never belonging to the Scottish Crown, could not possibly be in a Scottish charter; or if such a grant had been in, it could not possibly have passed the seals of office there. Again, the addressing the grandson of the Earl of Stirling, who was a commoner, by the title of "Consanguincus noster," was also a palpable incongruity and contrary to established usage, that royal acknowledgment of consanguinity having been always restricted to a peer. After this exposure, the charter might be regarded as much rent and torn as Cæsar's mantle, the detector as ruth-

less as the champion in song when "thrice he slew the slain." But to the questions whence it came, how it came, where it came from, no satisfactory answers could be given. No intelligible explanation was suggested as to the manner in which this stray chance document, with so many imperfections on its head, found its way into the possession of the pannel. As the forgery must have been executed since 1806, the date of the rebinding of the Record by Mr. Thomson, when the new mode of titling was introduced, if indeed the "Reg. Mag. Sig." was not subsequently written, it could not have been in the possession of himself or of any of his family before his going abroad in 1802.

These facts were proved by legal antiquarians, who had grown grey in the public offices.

The demolition of the next forged document, though framed with exceeding art and skill, was, if possible, still more curious and complete. Mr. Alexander having commenced a civil action for the recovery of the title, honours, and lands, the Lord Ordinary, Lord Cockburn, issued a note on the 10th of December, 1836, in which he pointed out two defects in the evidence of the alleged descent of the pannel.

"The defender states that he is the great-great-great-grandson of the first Earl of Stirling; and he explains the successive steps of his descent to be, that he is the son of Hannah Alexander; who was the daughter of the Rev. John Alexander; who was the son of John Alexander, called of Antrim, in Ireland, because he at one time lived there; who was the son of John Alexander, called of Gartmore, in Scotland, because he married the heiress of that estate; who was the son of the first Earl. In stating this pedigree he assumes, and the pursuers concede, that in a question of service, under the law of Scotland, he is not bound to prove the failure of all intermediate heirs; but that unless the existence of some prior heir be established, or at least pointed out, by the pursuers, it is enough for him to show such a relationship as, in the absence of such known or indicated heir, leaves the right in him.

"The pursuers do not question that he is the lawful son of Hannah Alexander, nor that this lady was the daughter of

the Rev. John Alexander, who is said to have died in 1743. But there are two descents between this last person and the first Earl, and they maintain that neither of these is established. They deny it to be proved that the Rev. John Alexander was the son of John of Antrim, who is said to have died in 1712; or that this John of Antrim was the son of John of Gartmore, who is said to have died in 1666. *The whole of the defender's case depends upon the genuineness of these two descents.*

"The defender maintains that the first John Alexander contracted a second marriage, and became the father of John Alexander, called of Antrim, who, in his turn, became the father of the Rev. John Alexander.

"It is a very serious defect in the defender's case, that of this alleged *second marriage there is no proof whatever*, except that which is implied in the evidence of his afterwards having a son. He was in a station of life which made any marriage of his not obscure; yet the fact of his being married for a second time is not even attempted to be established by any direct or separate evidence, but is made a mere inference from the supposed circumstance of his appearing as the father of a male child.

"The proof of the filiation of the two Johns consists chiefly of the following three articles:—1st, two affidavits, one by Sarah Lyner, and one by Henry Hovenden; 2d, of an alleged inscription on a tombstone, in Newtonards in Ireland; 3d, of the examination of certain witnesses, chiefly Margaret M'Blain and Eleanor Battersby.

"First, as to the affidavits, one of which is dated in 1722, and the other in 1723. The Lord Ordinary is very strongly inclined to think that, even assuming them both to be genuine, they are altogether inadmissible.

"They are not alleged to contain the statements of *any member of the family*, who must have known the facts, but proceed from mere *strangers*, of whose cause of knowledge we know nothing. They were not taken in this cause; neither were they taken in any known judicial proceeding; or before any party opposing, or entitled to oppose; or in any circumstances with which we are in the slightest degree ac-

quainted. Every thing shows that they were taken, not *post litem*, but *post controversiam motam*. So far as is now known, they may be voluntary affidavits, concocted either for the purpose of sustaining this pedigree, or for some other purpose interesting to the person who devised them.

"It has been argued, that they are at least as admissible as evidence of what those who made them, or any other dead person, said, would be; or as clauses in deeds; inscriptions on rings; entries in books; family pedigrees, and such things are. But it is not so. These, and all the other things to which affidavits such as these are compared, are received, because, when honest, they form parts of real and known proceedings,—or occur where opposite interests probably arise, —or record natural feelings and events, in a natural way, and on natural occasions. These things owe their credit to their simplicity,—to their accordance with the general course of life,—to the absence of any preparation, or of any motive to prepare, for a future object. But the prospective manufacture of evidence, in the form of written statements, calculated to establish particular facts, are only rendered the more suspicious by their being made to assume a judicial appearance.

"These documents, and much of the other evidence in this case, show that *somebody* was uneasy about this pedigree, even in 1722, and was trying to correct its defects. The paper is exposed to a degree of suspicion which makes it unsafe to rely on this document. Lyner was eighty-four years old when she deponed, and states only an unexplained assertion, that Antrim was the son of Gartmore.

"Hovenden's affidavit says, 'That he is intimately acquainted with the Rev. minister John Alexander, *grandson, and only male representative of John Alexander of Gartmore, the fourth son of William, first Earl of Stirling, in Scotland; which said John Alexander was formerly of Antrim.*' This is liable to the same observation with the last document. It merely contains the general assertion of the deponent, who no doubt describes the pedigree agreeably to the wishes of those who made him take the affidavit, but states no circumstance to warrant his opinion.

"In the second place, tombstones have sometimes gone far to decide pedigrees; but probably none was ever founded on in circumstances like the one relied on by the defender.

"The stone itself confessedly does not exist. But a copy of the inscription which is said to have been upon it is alleged to have been inserted in a Bible. But the Bible confessedly does not exist. All that is produced is, a piece of paper, which is said to have been a page of the Bible on which a copy had been made.

"Now, the only evidence of this page having been a part of the Bible, consists of the signatures of four persons, — one a member of this family, — one an attorney, — the third, his wife; and the fourth, the clerk of a glass-manufacturer. These persons attest that '*this leaf, taken out of poor John's Bible, is put up with the other family papers for my son Benjamin. Done* this 16th day of December, 1766, in the presence of my friends and Mr. John Berry, who, at my request, have subscribed their names as witnesses.'

"The inscription thus copied into the book, and thus cut out of it, is very strong in the defender's favour; *as strong as if it had been composed for this very case.* But as a piece of evidence it is liable to great objections.

"The alleged entry was confessedly *not in the handwriting of the person to whom the Bible belonged.* It bears to have been copied for him by a stranger.

"If all this had been in the ordinary course of such domestic records, these signatures might have been satisfactory. But it is no part of the usual uses of a Bible to receive copies of inscriptions. Entries in family Bibles are admitted as evidence, because they record solemn incidents, unsuspiciously, in an usual way. But is any respect due to an extraordinary proceeding like this; when the original book, with all its memoranda, is not exhibited; — when the detached page, said to have been taken from it, is accompanied by signatures and attestations, which show that those engaged in cutting it out were aware that its separation from the book would deprive it of the credit due to an original writing in a book belonging to the family; and where no good reason has been assigned for its excision; for if the object had really been to

preserve this inscription with the other family papers, it is difficult to understand why the original and unmutilated book itself was not put up with them.

"The defender attempts to corroborate the copy by proving that there really was such a tombstone. But his evidence on this point consists merely of the testimony of Margaret M'Blain, a pauper aged eighty; whose deceased husband, a mason, *told her*, about forty or forty-four years previous to the time at which she was examined, that when he was new-flagging the door of the Old Church, he had seen the grave of a Lady Mount Alexander; that the stone was broken, and that he built it into one of the walls of the church for its better preservation. According to this, the stone was visible and safe in the wall in the year 1792.

"But this evidence was disproved by the stone cutters employed about the very church, who say that they never saw such a stone; and by Mr. Cassidy, the clergyman, who had been constantly there for the last twenty-seven years, and not only never saw it, but being shown the inscription alleged to be a copy of that on the tombstone of John Alexander, was quite positive that no grave-stone in the vestibule or chapel bore any such inscription.

"The defender's object in examining Margaret M'Blain and Eleanor Battersby was to show that, independently of the affidavits and of the tombstone, the filiation of the two John Alexanders was known and believed upon other grounds. Both speak from hearsay; one from what the last Countess of Mount Alexander told her, when she herself could not have been older than fourteen. What reliance can be placed on the recollection of a child as to names and relationships uttered casually in her presence sixty-six years ago? The other states she has heard her grandmother say that she heard her father say, that the said John of Antrim was come of the Alexanders from Scotland, and was nearly related to the Earl of Mount Alexander in Ireland: this hearsay of a hearsay does not admit of being weighed."

This acute and unanswerable judgment, demolishing the whole of the claimant's case and exposing its utter worthlessness, was delivered 10th December, 1836. Immediately after

he went to Paris, and remained there six or seven months, visiting almost nightly the fortune-teller, Madame Le Normand. In the following July there was delivered from her house a map of Canada with certificates on the back, which supplied all the deficiencies pointed out in Lord Cockburn's note, and which, if genuine, proved Mr. Alexander to be entitled to the great honours and fortunes of the earldom of Stirling. The first extraordinary writing was represented to be made by one Phillip Mallet, and in the following marvellous strain. It is written in French; but the subjoined is a literal translation:—

"Lyons, August 4, 1706.

"During my residence in Acadia in 1702, my curiosity was excited by what I was told of an ancient charter, which is preserved in the archives of that province; it is the charter of confirmation (or *de novo damus*), of date 7th December, 1639, by which Charles the First of England renewed, in favour of William Earl of Stirling, the titles and dignities which he had previously conferred on him, and all the grants of land which he had made to him from 1621, in Scotland and in America. My friend Lecroix gave me a copy of it, which, before my departure, I took the precaution of having duly attested. From this authentic document, I am about to present some extracts (translated into French for the benefit of such as do not understand Latin), in order that every person who opens this map of our American possessions may form an idea of the vast extent of territory which was granted by the King of England to one of his subjects. If the fate of war, or any other event, should replace New France and Acadia under the dominion of the English, the family of Stirling would possess these two provinces as well as New England, 'and in like manner the whole of the passages and boundaries on land and on water, from the source of the river of Canada, wherever it may be found, to the Bay of California, with fifty leagues of land on each side of the said passage, and besides, all the rest, lands, boundaries, lakes, rivers, straits, woods, forests, and others, which may be in future found, conquered, or discovered, by the said Earl or his heirs.' The order of succession to this inheritance is as follows:—1°. To the titles of nobility (*de novo damus*, &c.) to the said William Earl of Stirling, and to the heirs male of his body; whom failing, to the eldest heirs female (*hæredibus femellis natu maximis*), without division, of the last of the said heirs male, and to the heirs male of the body of the said heirs female respectively, bearing the surname

and the arms of Alexander; and failing all these heirs, to the nearest heirs whatsoever of the said William Earl of Stirling (here follow the titles, &c.). 2^do^. To the territorial possessions (*de novo damus, concedimus, disponimus, proque nobis et successoribus nostris, pro perpetuo confirmamus*) 'to the said William Earl of Stirling, and to the heirs male of his body; whom failing, to the eldest heirs female, without division, of the last of the said males who shall succeed hereafter to the said titles, honours, and dignities, and to the heirs male of the body of the said heirs female respectively, bearing the surname and the arms of the Alexander family, which they shall be bound and obliged to take,' &c. &c. Thus the King of England has given to the Earl, and has secured to his descendants in perpetuity, enough of land to found a powerful empire in America."

Not content with this singular memorandum, there was adjoined a further certificate by one St. Estienne.

"The above note is precious. I can certify that it gives in few words an extremely correct idea of the wonderful charter in question. As to the copy of this charter, it is attested by the Keeper of the Records (l'archiviste) and the Acadian witnesses, and must be in entire conformity with the Register of Port Royal. While at Quebec, I had heard of the grants to the Earl of Stirling; but my friend M. Mallet was the first who procured me a perusal of the charter. This extraordinary document extends over fifty pages of writing, and the Latin any thing but classical; still, as a Canadian somewhat interested in its contents, I am bound to say, that I read it from end to end with as much curiosity as satisfaction. The late M. Mallet was a man whose good qualities and rare understanding make us regret a death which snatched him so suddenly from his friends. He had foreseen that the copy would not make the charter known in France. Hence he conceived the idea of writing, on one of the beautiful maps of Guillaume Delisle, a note which all the world might read with interest. Had he lived long enough, he would have added to this interest; for he wished to obtain information in England as to the then situation of the descendants of the earl who obtained the grants; and all the information which he might have received respecting them he would have transferred to this very map. But, after all, with the two documents which he has left to us, no person in France can question the existence of such a charter.

"Lyons, April 6, 1707."

To add weight to these testimonials, an autograph of

Flechier, Bishop of Nismes, was subjoined to the writings on the map.

"I read lately, at the house of Monsieur Sartre at Caveirac, the copy of the Earl of Stirling's charter. In it I remarked many curious particulars mixed up with a great many uninteresting details. I think, therefore, that the greatest obligations are due to M. Mallet for having, by the above note, enabled the French public to judge of the extent and importance of the grants made to this Scottish nobleman. I also find that he has extracted the most essential clauses of the charter; and in translating them into French, he has given them with great fidelity. Monsieur Caron St. Estienne has asked me to bear this testimony. I do so with the greatest pleasure.

"Nismes, June 3, 1707."

For the purpose of giving still greater verisimilitude, a letter was written, signed John Alexander, dated Antrim, August 25th, 1707, and carefully pasted on the back of the map.

"Antrim, August 25, 1707.

"I cannot express to you, madam, how sensible I am of the honour of your remembrance. My sincere thanks are also due to Monsieur de Cambray, since he, by facilitating the journey of my friend Mr. Hovenden, was the means of my being so quickly put in possession of your letter, and the copy which you have been good enough to forward to me, of the note respecting my grandfather's charter. The questions which you put to me, I shall endeavour to answer to the best of my ability. I am not, as you imagine, heir to the family titles. The present head of our family is Henry, fifth Earl of Stirling, descended from the third son of my grandfather. He resides within a few miles of London, has no children, but he has brothers, of whom the eldest is the heir presumptive. Of the first son no descendants survive, except the issue of his daughters. The second son died without issue. My father was the fourth son; his first wife was an heiress of the house of Gartmore in Scotland. My mother, of the Maxwell family, was his second wife. But, although he had daughters by his first wife, he never had any other son but me. To complete this family genealogy, I must tell you, madam, that my wife is a cadette of the Hamilton family, a ducal house in Scotland, and that she has borne me a son called John, after my father and myself, and two daughters. I have at present so little idea of the possibility of the titles and estates of Stirling devolving on my

children, that I have encouraged my son in his inclination for the ministry of our Church of Scotland; and in that view, he is now prosecuting his studies at the University of Leyden, in Holland.

"I shall preserve with care the interesting note of M. Mallet. The charter was at one time registered in Scotland as well as in Acadia; but during the civil war, and under the usurpation of Cromwell, boxes containing a portion of the records of that kingdom were lost during a storm at sea; and according to the ancient tradition of our family, the register in which this charter was recorded was among the number of those that perished.

"Such, madam, is all that I can say in reply to your questions; for it is impossible, in this country of Ireland, to obtain any other information with regard to the registered charter. I believe that my grandmother gave *the original charter* (which she brought from Scotland, when she came to take up her abode in Ireland) to her son-in-law, Lord Montgomery, in order that he might preserve it carefully in Castle Comber, where he resided. I shall ascertain what this family may have done with it; and I shall have the honour of acquainting you with any discovery which I may make.

"I shall never forget, madam, your kindness towards me, or the charms of the society which I always enjoyed at your house. While I live I shall not cease to feel attached to you by the most respectful devotion."

Even these attestations were not thought sufficient, and that of the good Archbishop of Cambray, Fénélon, was added to the map two months after, according to the supposed date, 16th October, 1707.

"The friends of the late M. Ph. Mallet will doubtless read with great interest this letter of a grandson of the Earl of Stirling's. M. Cholet of Lyons, setting out to-day, 16th October, 1707, on his way home, will have the honour of delivering it to M. Brosette, on the part of Madame de Lambert. To authenticate it, I have written and signed this marginal note.

(Signed) "Fr. Ar. Duc de Cambray."

Even a greater than an archbishop was next introduced to affix his imprimatur to this extraordinary series of documents. "This note," his Majesty Louis XV. is made to say, "is worthy of some attention under present circumstances; but let the copy of the original charter be sent to me." Each of these remarkable writings on the map was charged as a forgery.

Further discoveries were made during the trial with regard

to the detected false attestations on the map. Owing, it was supposed, to the extreme heat of the court, a corner of the map became separated from the rest, and revealed some writing under the inscription on the back. Mr. Lizars, the engraver, was directed by the Court to remove the supposititious inscription from the back of the old map, and on this being effected, and the pasted part removed, there stood revealed under it, and on the map itself, an unfinished writing of the same Fénélon, containing (as interpreted) the words, "This John Alexander is a man of real merit, and whom every one sees with pleasure at court, and in the best society in the capital." Now, if this document had been genuine, it would just have been as effectual for the purpose of the collectors of those writings as the certificate of the archbishop in front; but the forger appears to have entertained some misgivings as to the contents of the note being credible.

Here the forger of these documents laboured under a mistaken belief that this map was in existence in 1703. And if it had existed in 1703, these writings of date 1706 and 1707 might have been written upon it. But, in fact, — though the forger was not aware of it, — *the map did not exist till* after the 24th August, 1718. The date of 1703 stands upon the map as if it were the date of its publication; it is in fact the date of the *original copyright*, that date being invariably preserved throughout all the subsequent impressions of the different editions of the map, because it was the period from which the privilege originally granted to the author was to run. The words at the bottom of the map are these: "Avec privilege pour vingt ans, 1703." But, while this appears on the map as the date of its *privilege*, there are also these words in the engraved title, indicative of the status and profession of its author: "Par Guillaume Delisle, Premier Géographe du Roi." Delisle did not obtain his patent of "Premier Géographe du Roi" till the 24th of August, 1718. He left upon his map the date of the original privilege, as being equally applicable to it, whatever the changes in his own description, character, or designation, or in the different domiciles or places of residence which he might occupy for the time. But with every change of residence, and every

change in his own title or designation, he made a corresponding change on the original copper-plate, from which the successive impressions of the map were thrown off. The jury had laid before them different impressions of this identical map of Canada, engraved at distinct periods by Delisle. And although, in all, the date of the original privilege is preserved, there is a change made in each impression applicable to Delisle's residence or title for the time. Now, in 1703, Guillaume Delisle was not "Premier Géographe du Roi;" he was simply "Géographe." There was produced an early impression of the map thrown off during this period; and in that impression the author's name is given "Guillaume Delisle, Géographe," the word "Géographe" occurring in the same line with his name so as to suit the general arrangement of the title, without any blank appearing, and nothing being inserted between the lines. In the same impression the residence of the author is given, "Rue des Cannettes." This is the simple shape in which the title of the map originally appeared in all the earliest impressions. Afterwards, however, there was another edition, still thrown off from the same copper, but with certain changes and alterations, of which also a copy was produced. Delisle had by this time become "Premier Géographe du Roi." Accordingly, he effaces the original title, "Géographe," which had been originally in the same line with his name, and inserts his new title below, the words being crowded in betwixt the lines. The residence is also changed; it is given, not as it was before, but "Quai de l'Horloge, à l'Aigle d'Or." So that no fewer than three alterations occur in this copy — the effacing of the original title and address, the substituting of the new title, and the insertion of the new residence.

There was put in evidence the patent in favour of Delisle, *bearing date August 24th,* 1718, conferring on him the office of "Premier Géographe du Roi," "First Geographer to the King." "This day &c. The King being in Paris, having authentic proofs of the profound erudition of S. Guillaume Delisle, of the Royal Academy of Sciences, in the great number of geographical works which he has executed for his use, and which have been received with general approbation by the

public, his Majesty, by the advice &c., has declared, and declares, wishes, and enjoins, that the said Sieur Delisle be henceforward his first geographer, with a salary of twelve hundred livres per annum."

It might have been said, in regard to the papers pasted on the back of the map, that they at least may have been written at the time they bear date, and only attached to the map afterwards. But even that will not do. For these writings are attached to, and bear to be attestations of the other writings on the body of the map, dated in 1706 and 1707; so that, if these last were not in existence at the dates they bear, the others cannot have been in existence either. They all hang together. If the first be false, all are false.

Then, as to the writings bearing to be under the hands of Fénélon and Flechier. Flechier died in 1711. This appears from the examined copy of the patent for the installation of his successor in office. Fénélon died in 1715. That fact is established by an extract from the Register of the Chapter of Cambray, giving the very day and hour of his death. The alleged writers of these documents, therefore, had gone down to their graves before the map on which the documents are written was in existence; and yet these writings are said to be theirs. As to Mallet and St. Estienne, such persons were never heard of before. They may be considered mere fictitious characters.

Some indication was given of an intention to show that the alterations on the title of the map might have been effected by the use of double plates, the additional line being inserted by a second impression on the same sheet of paper. But a process of this nature could not have *effaced* the first "Géographe," or effected the *changes* which appear in the author's residence.

The way in which the operation was effected was not by the use of double plates, but by effacing *on the copper itself* a part of the original inscription, and re-engraving it. This method being so clear, it was scarcely necessary to corroborate it by the evidence of men of skill, speaking to the fact of forgery, from the very appearance of modern manufacture in the writings themselves. These witnesses all substantially

concur in their remarks on the ink which had been used in these writings. Theulet and Jacobs, both of them conversant with the mode of imitating old writings — a process more frequently practised in France than here — say, that the ink in the writings of "Ph. Mallet" and "John Alexander" is not the usual ink of the period, but a modern composition, not then known, of China ink, yellow, and carmine; and they even detected the carmine on the edges of the letters of these writings.

Apart from and beyond these decisive proofs of fabrication, the matter of the writing itself, though graced by such lofty titles, furnished the strongest token of fraud and falsehood. Why should there have been such a lively sensation in 1706 or 1707 about an old map of Canada? With reference to any interest which could be supposed to have then existed, it was only like a sixth act to the play of "Much Ado about Nothing." Why should Mallet at Lyons in 1706, St. Estienne also at Lyons, Flechier at Nismes in 1707, Fénélon at Cambray, John Alexander at Antrim, the King at Versailles, all concern themselves about a matter which was to be of no conceivable importance to any human being for a whole century, and even then of none to any but the prisoner, to supply certain unexpected blanks in the evidence of his pedigree. Why was this grand machinery set in motion? Was it natural or was it necessary? Was there a *dignus vindice nodus?* One would have thought, with names of persons of such eminence as Louis XV., Fénélon, and Flechier attached to it, that there must have been some important interest of one kind or other to serve. But no; the utmost ingenuity could not suggest a tangible motive.

At the time Canada was a French colony; and is there not a moral impossibility in supposing that a Frenchman, M. Mallet (more fortunate, it is to be hoped, than his namesake, whom the genius of Charles Mathews has immortalised), could anticipate the gallant achievement of Wolfe, and write, "If the fate of war, or any other event, should replace New France and Acadia under the dominion of the English, the family of Stirling would possess these two provinces, to the Bay of California?" Was ever Frenchman so unpatriotic as

to dream of his countrymen being vanquished by the English, before the event? Even when accomplished, he will scarcely confess the fact. There were two records in existence to prove the nature and extent of the grants to the family of Stirling. The charter which M. Mallet is evoked to give effect to, made no charge in this respect, and did nothing more than effect a change in the destination of the honours. But how did this include in the most remote degree the interests of France, or at all concern M. Mallet? Whom could it interest except the descendants of the Earl of Stirling, in whose favour, at the close of more than a century, the grant pasted on a single copy of Delisle's map stole into public view for the first time in the Court at Edinburgh?

These points were brought out and placed in strong relief by the successive witnesses.

Pierre François Joseph Leguix, print and map seller, at Paris, was examined *in initialibus* by Mr. Robertson; a process in the Scottish Courts analogous to our examination on the *voir dire*, to test the competency of the witness. Any thing in the shape of a bribe is so abhorrent to the principle of the civil law, that even the remuneration for travelling expenses and loss of time must not be on too large a scale, or it may raise an objection to the witness being heard.

Mr. Innes explained that the bargain was to this effect, that the witness should have 40*l.* a month while he was absent from Paris, and that his expenses should be paid.

Mr. Robertson. What is the amount of your income from your business?

Lord Meadowbank. The witness is not bound to answer that question.

Mr. Robertson. The witness certainly may answer it if he chooses.

M. Leguix. My monthly profits may be from 500 to 700 francs.

The witness was admitted, as he had received nothing beyond what it was quite necessary and proper that he should receive.

Lord Moncreiff mentioned an instance of a gentleman, an advocate at this bar, being taken over to Ireland to give

evidence; he received a large sum of money beyond his expenses, yet it never was for one moment imagined that such a payment affected his admissibility as a witness.

The learned Judge forgot for a moment that the law is different there, and that no objection on such a ground could be taken to his testimony.

This preliminary objection being overcome, the witness remembered in the winter of 1836 and 1837 a person coming frequently to his shop on the Quai Voltaire in search of maps of Canada; the individual was an Englishman; he sold him several. There was one map of a particular date which he wished to get, 1703, similar to the one produced. There were no writings on the back of it. He did not explain who he was, or say why he wished to have that map. "I remember there were some civil troubles in Canada at the time, and I might suppose that the map was wished for, in consequence of these. He paid for the map about a franc and a half" (fifteen pence).

Hucues François Beaubis, a shoemaker, was also examined *in initialibus* by Mr. Robertson, on the same objection, as it by no means followed that the same sum was proper to be given to persons in a different condition of life. He made 200 francs per month, and received 1000 francs per month, and his expenses for coming to Scotland. As every witness must sooner or later be paid his travelling expenses for coming to the trial, it follows that he is not to be considered as disqualified, or even suspected, if he has received a sum of money adequate, *and not more than adequate,* for that purpose, either from any of the public authorities or the private party injured.

The Lord Advocate distinguished the rule of law laid down by Mr. Alison, as referring to witnesses resident in this country. "This is a witness brought from France, who was not obliged to obey any order of this court, and who must receive what may be considered a reasonable inducement to him to come here. The question is, whether an allowance at the rate of 40*l.* per month, from the time he may be detained in this country, be such an excess of remuneration as to corrupt his evidence, and induce your lordships not to allow him to be examined."

Mr. Robertson enforced the objection. "My Lords, the simple question is, are we entitled to exclude the witness? The witness is not a professional person; he is not like a professional man taken to England or Ireland, to give professional evidence on the law of Scotland. He is an ordinary witness, called upon to give evidence to an ordinary occurrence, not at all connected with his profession. The first question is this, Is there any amount of payment so excessive as to exclude a witness coming from a foreign country to give evidence in this court? Can it be maintained that, in place of 1000 francs, 1000*l.* a month might be given to this person, and that still he would not be excluded? This is a question of degree, and to a porter receiving wages at the rate of 8*l.* a year, a payment of 120*l.* down is a greater bribe than ten or twenty times that amount to a man in a different situation. Let me remind your lordships, that the rules of our law as to the exclusion of witnesses are founded on the most sacred of all privileges — the fear of perjury; and I know nothing that would tend more to the introduction of perjury, than that foreign witnesses should be brought into this country, to inundate our courts with evidence, for which they shall receive more than their brightest hopes ever entitled them to expect."

The Court repelled the objection. "To lay down the rule that nothing is to be paid to a foreign witness beyond his necessary expenses, would just be to decide that no foreign witness can be brought to give evidence in this court. A witness in this country being bound by law to attend and give evidence when required, more than his necessary expenses is not allowed. But it is quite plain that foreign witnesses, living beyond the jurisdiction of the Court, are in a totally different position. Then, if it is lawful to give indemnification to persons in that situation, I do not see that the indemnification here given is excessive, or such as can exclude the witness. He is making 200 francs per month of profit in his trade. He has a family, and resides in Paris. He knows nothing of Scotland, where he is a stranger — ignorant even of the language of the country, and probably entertaining towards it some of the horrors of

foreign prejudice. The question is, if an offer of 1000 francs per month for the period he may be detained here be excessive. I do not think it is so, especially for a single month; and it is not likely that his stay would have extended beyond that, had not the trial been postponed — which postponement took place on the application of the pannel himself.

"There is another principle in our law equally important — that, namely, which regards with no favour *ultroneous* witnesses. If this witness had come here without any stipulation as to his remuneration, I think his testimony would have been more suspicious; because, not being under any obligation to come, if he had come without any previous arrangement, it might have been an objection, that he must have some other motive than the ends of justice.

"There never was a case tried in this court, or in the civil court, where it was necessary to bring witnesses from abroad, in which they were not paid more than their expenses. And where there is no *compulsitor*, I have no hesitation in saying that there would not be the means of administering justice if the testimony of a person in the situation of this witness were not to be received in evidence. I think he is a far more unexceptionable witness than if he had come here without making such an arrangement."

Lord Cockburn concurred entirely in every word that had been said, and added: "A country apothecary, who may be a very poor man, generally gets two guineas a day when called upon to give evidence in this court; but I should be surprised to hear a counsel object to such a witness, — 'You are paying him far too much; you are paying him at the rate of 800*l.* a year.' Looking at the facts of the case, I am not sure that this man has made a good bargain: I think a judicious friend in Paris would have said to him, 'You had better stay here than go to Scotland on such terms.' But whether this be so or not, there is an element in the case not to be lost sight of; namely, the fact that we have no power over a foreign witness."

The only wonder is, that such an objection should have admitted of any doubt and difficulty. It was accordingly repelled.

This porter, a very damaging witness to the defendant, proved the visits of Mr. Alexander to Mademoiselle Le Normand. He came at eight o'clock in the evening generally, and used to stay from eight to ten o'clock, when he usually left the house. These visits continued during the space of seven or eight months.

He described Mademoiselle Le Normand as a fortune-teller on the cards ("*tireur de cartes*"), who made her living by that occupation. She had a sign over the door of the house in the Rue de Tournon, Faubourg St. Germain, as a librarian or bookseller; but did not carry on that trade.

He was cross-examined by Mr. Robertson as to the words of the sign.

Is not the word "Auteur" on the door?—The words are "Auteur Libraire."

Are there the words "Bureau de Correspondance?"—Yes, both on the sign and on her own door.

Any trifle to draw off the attention of the jury and impart a tinge of respectability, if possible, to the adventuress. These nocturnal visits to Mademoiselle the fortune-teller ought not to produce any personal scandal, for she was seventy-five!

We need not detain the reader with the evidence of the chemical witnesses, who made scientific experiments as to the age of the alleged excerpt, but differed entirely in their judgment from the results; or with the series of forged documents left at a bookseller's, De Porquet's, in Tavistock Street, London, with the compliments of a Mrs. Innes Smith, inclosing a genealogical tree of the Alexanders of Mestree, Earls of Stirling, and family records that conveniently supplied defective names and dates; or with the letter to Mademoiselle Le Normand, purporting to be written by a French minister who dared not interfere openly, and accompanying the map of Canada, as the jury found unanimously that it was not proven that these documents were forged. There could be no moral doubt that they formed a part of the fraud. A long series of letters from the clever Mademoiselle to the *soi-disant* Earl and Countess were also put in and read. They proved a very suspicious intimacy, especially the one which mentioned the discovery of the map

of Canada. "This will not only serve to enlighten the judges, but also to convince them. If, my Lords, your judges, raise any difficulties about this matter, as regards my name, or the friendship which has united us since 1812, show them first the works of your friend, and afterwards let them make inquiries in France. I have lived in the Rue de Tournon since 1795. I am a proprietor of houses and lands, and a patented bookseller since 1810, established at Paris. In short, I could have told you, I have had this map twenty-five years; but I should have told a falsehood, and never did a falsehood defile my lips."

Stanislas Jacobs, geographical engraver, attached to the Institute at Paris, who had made the preparing of *fac-similes* of ancient writings his study, and M. Theulet, agreed that the title of Delisle had been altered on the copper since 1718, when he was appointed "Premier Géographe du Roi." The change, they explained, is made sometimes by interpolation; but this interpolation only takes place on those maps, the date of which is anterior to 1718. On those subsequent to 1718, there is no interpolation, the words "Premier Géographe du Roi" being always regular with the other part of the title.

Can you say positively whether that impression of the map (the one libelled on) existed before 1718 or not?—I am assured, in my conviction, that this map could only have been printed after the 24th of August, 1718.

You have no doubt whatever of that?—I have no doubt whatever of this conviction.

Is it possible that any other operation, except one on the copper of the map itself, could have been used to insert that line in the manner there done?—I think that now-a-days, when engravers possess means which were not known or in use at the time this map was published, it might possibly be done; but the operation would be difficult, if not impossible.

Mr. Innes. Look at the writing on the back of the map of Canada, signed "Ph. Mallet." Is that such ink as you have seen generally used?—That is not such ink as is in common use. It is not ink that has grown old. I think it must have been composed to imitate ink turned old, which assumes through age a brownish tint. The ink having sunk has turned redder towards the edge of the letters. At

the time I was employed in making *fac-similes*, I have been asked to restore pages wanting either in ancient Bibles or manuscripts, and I have wanted to make an ink resembling that of those manuscripts, which, having turned old, had contracted a colour usual in old writings—a yellowish tint. For that purpose, I made use of China ink, yellow, and carmine or red. The colours I have mentioned did not always mix well together; and it has often happened, in making those trials, that I found a similar result to that which I have just pointed out as having happened here.

Forming a judgment from the ink alone, and the appearance of the writing itself, is it your opinion that these are genuine or false documents? and are they documents of the dates they bear?—I should think them false.

Mr. Lizars, the engraver in Edinburgh, spoke to the common practice of engravers to preserve the coppers of their maps. This parol evidence, with the written documents, closed the case for the prosecution.

Mr. Robertson prefaced his exculpatory evidence by stating that the first witness whom he meant to adduce was one to prove the handwriting of Thomas Conyers, an attestation that a person dead above a hundred years ago set his hand to a paper, giving an account of the charter in question, the two attestations by Thomas Conyers bearing date in 1723, and referring to the charter of *novo damus*, the excerpt of which the pannel was accused of forging. "I do not say that Hovenden's affidavit or Conyers' attestation will prove the fact of the existence of the charter in 1723, but they will prove that in 1723 these documents themselves existed, saying that there was then such a charter. Be it that evidence of this kind would not prove the existence and tenor of a charter in a question of civil right. But when I am charged criminally with the guilty issuing of the excerpt from this charter, knowing it to be forged, is it not of consequence, in reference to my guilt or innocence, that I should be able to prove the existence of these documents which refer to this very charter as existing a hundred years ago: not with a view to set up a claim to the lands, but to have the effect of destroying the allegation of guilty knowledge on the part of the pannel?"

The judges retired to consult together on the point raised. On their return the judgment was thus announced by Lord Meadowbank. "The Court are of opinion, that the counsel for the pannel are entitled to prove the handwriting of Thomas Conyers, and that, if it is proved, the attestation to which it is appended may be read, but not to the effect of proving the truth of any fact which it sets forth."

Mr. Robertson. It is proof that Conyers signed this attestation.

Lord Cockburn. But not that he did so in good faith.

Mr. Robertson. Then if the attestation, though read, proves nothing, I shall not trouble the Court with proving the handwriting.

"I next tender certain letters from Mr. Banks to Lord Stirling, and move that they now be read."

The Solicitor-General. I understand my learned friend, for the purpose of making an impression on the jury at a future stage of these proceedings, to tender certain documents which he knows not to be evidence, and to throw upon me the odium of their not being received. Now I say, once for all, that it is far better, and will tend to the regularity of procedure in this court, that we should stand upon the strict rules of evidence.

Mr. Robertson. While my learned friend the Solicitor-General chooses to complain of my conduct, I make no complaint of the way in which this case has been conducted on the part of the prosecution. I have not tendered what I knew to be incompetent evidence. After the decision to which the Court had come in regard to the letters to Mr. Lockhart, I knew that these letters would be rejected. But I was bound to tender them on behalf of my client, and to see whether they would be objected to. The other party are entitled to object to their being received, and they do object to them. Your Lordships are bound to reject them, if they be inadmissible as legal evidence.

Lord Meadowbank. The jury know their duty too well to be in the least influenced by the apparent wish to produce any documents which are held by the Court not to be admissible as evidence, and which are not before them.

Most important evidence was then adduced to the high

character of Mr. Alexander, and to the authenticity of the writing on the map.

Mr. Josiah Corrie, solicitor, Birmingham, knew the late Mr. Humphreys, the father of the pannel, who died in 1807. He had been his agent ten years, and was employed to draw his rents when he resided at Fairhill, now called The Larches, near Birmingham. He proved his handwriting on the parchment cover marked "Some of my wife's family papers." He was told by the late Mr. Humphreys, that *some of the family papers had gone a-missing.* He had known the pannel for more than forty years: none could have a better character.

On cross-examination, he spoke of his being at the head of a highly respectable educational establishment at Worcester, and had heard of his speculating in wine, — a somewhat incongruous union of characters. "I had all the documents," said the agent, "in my hands, and I exhibited them to Sir William Rae, who was satisfied with them." Mr. Humphreys explained the grounds of his claim to the title. In 1815, he said he had no documents, or no effectual documents, to support his claims, which was the reason of my declining to act for him then.

A Juryman. When was it that you first saw that document called an excerpt of a charter? — I believe it was when I exhibited it to Sir William Rae. I went to his house along with Mr. Lockhart, and no question was raised by Sir William Rae about it. I have a floating recollection of being told that the excerpt came from the custody of a Mr. Conyers; but whether immediately from his custody or not, I cannot tell.

Mr. Charles Herald De Pages, attached to the Historical department in the King's Library at Paris, and nephew to the Marquis de Valfons, who had a collection of autographs, brought sixteen different manuscripts, and a piece which was given him by M. Villenave, as the handwriting of Louis XV. "There is," he said, "a great quantity of the handwriting of Louis XV. in the Royal Library of France!" He also brought a number of autographs of *Flechier*, which the Marquis de Valfons had sent him at his request. From

comparison with these, he spoke confidently to the handwriting on the map.

Mr. Robertson. You believe these documents to be in the handwriting of *Flechier,* Bishop of Nismes? — I am convinced they are.

Is that also in his handwriting? (showing the witness the note signed by *Flechier,* on the map libelled on). — I think it is the same.

Is that in the handwriting of Louis XV. (showing the witness the note attributed to Louis XV., on the map libelled on). — It is exactly like the specimens of his writing which I have brought here.

The presiding Judge upon this took the witness into his own hands too hastily. His misinformation about Louis XV. was singular, but complete.

Lord Meadowbank. Did you ever read "Voltaire's History of Louis XV."? — Yes, I have.

What does he say of Louis XV.'s handwriting? — I think he says that he did not spell correctly.

Does he not say that he never wrote above two words in his life, and that these were "Louis" and "Bon"? — He may say so; but I don't recollect it.

Does he not say that Louis XV., in writing private notes to his mistresses, made use of his secretary to write his billets? — I don't recollect that. I have not the work by heart.

Lord Moncreiff. If you were assured that that map which has been shown to you had no existence till 1718, would you still say that the writing on it was *Flechier's?* — Wherever it might be placed, I find it conformable to the writing of *Flechier.*

Lord Moncreiff (to the interpreter). Remind him that he said that *Flechier* ceased to be Bishop of Nismes in 1710; and then ask him the question again. (The question was accordingly repeated by the interpreter.) — It would not be the less like.

Lord Meadowbank. It is right that I should state to you, Gentlemen of the Jury, that, though I put these questions as to the statement of Voltaire, that Louis XV. never wrote but two words in his life, Voltaire is not an author to be

depended upon, and the statement may very probably be altogether false.*

Ephraim Lockhart, Esq., employed by the pannel as agent in April, 1828, had received the excerpt of charter at Netherton House, near Worcester, the residence of Lord Stirling, from his own hands. He produced the map and other documents in proof of the various suits. The documents last referred to were first received by him in London in the beginning of May, 1837, from Eugene Alexander, Lord Stirling's son. He stated that inquiries had been made in Ireland, to his knowledge with respect to a charter of *novo damus*.

John Tyrrell, Esq., some time an agent, or in the employment of the pannel, who first knew him in October, 1829, when living at the corner of Jermyn Street and Regent Street, was cross-examined as to his pecuniary circumstances, and demurred answering, inquiring of the Court, "Am I obliged to answer?"

Lord Meadowbank. Yes, if it comes within your own knowledge. You have no protection, not being a professional adviser.

He admitted that the pannel was in great distress for want of money; that his butcher's bill at Worcester was unpaid; and that his family there were in great distress. He was then engaged in endeavouring to raise money for the support of his family and the prosecution of his claims to the earldom of Stirling. He represented to Mr. Tyrrell that his prospects were great as to the title; that he only wanted money to

* The Editor of one of the reports of this curious trial has added a valuable note to this plagiarised error of the presiding judge. "This imputation on the literary fame of Louis XV. was referred to in the answers for the officers of state to the minute lodged for the defender in the action 'of reduction — improbation, where it is said of the writings on the back of the map of Canada, 'They are further dignified by a note, which is gravely said to be in the handwriting of Louis XV., a prince who is believed to have written only two words in his reign, his own name, *Louis R.*, and the word "*bon*," as an approval of any document submitted to him; his disapproval was marked by a line deleting the proposal, to save the fatigue of farther penmanship, which indeed he so carefully eschewed, that even his notes to his mistresses were written by a secretary.' No passage to this effect has been found in Voltaire's 'Siècle de Louis XV.' The statement cannot apply to the whole of the reign of that monarch, and it is doubtful whether any credit is to be attached to it."—*Swinton's Report of the Trial.*

enable him to complete it, to take possession of large estates in Maine, as to which he only required to send out an agent; and also to prosecute his claims to properties in Scotland. He stated that he had made good his claim to the estates in Maine. I think he said eleven millions of acres. That Mr. Banks, his agent, had been in America, had seen the property, and had reported to him that he had only to send out a person to take possession; that part of it was already occupied, and part not; and that the occupants of the lands were to give him a quarter of a dollar per acre to be confirmed in their titles.

Mr. Tyrrell agreed, on these representations, to endeavour to raise money for him by showing Lord Stirling's claims, and the properties he would probably come into, as instructed by himself, and effected several loans for him, one of 10,000*l.* from Mr. Ward, at an usurious rate of interest and on extortionate terms. Many other loans were made between October 1829 and February 1831. Paintings of great value were purchased, at a fancy price, and lodged with Mr. Ward along with the claimant's bonds as a collateral security. The pannel benefited by these transactions to the extent of 13,000*l.*, giving security for advances in bonds to the amount of no less than 50,000*l.*

He returned to London in 1830, took a large house in Baker Street, and lived sumptuously.

Mr. Hardinge, of Bole Hall, near Tamworth, spoke to the good circumstances of the parents of the pannel. "Nobody in Birmingham lived better. They kept their carriage and pair of fine grey horses, and had half a dozen of servants at least. He had known Lord Stirling forty years, and being asked his opinion of him as a man of moral principle and honour, replied, 'If I were to point out a man as remarkable for the strictest honour, or to be regarded and valued as a father, a husband, a friend, I would name Lord Stirling.' When at school, he was universally beloved by every individual. When I saw him again, I had occasion to know a great deal of him. I introduced him to Sir Robert Peel; and in his letters to me I never saw an expression that was not honourable to his head and heart. There is no man in existence more honourable, in my opinion, than himself; and

as to that, from the knowledge I have of him, I think myself entitled to speak with confidence."

Roger Aytoun, Esq., Writer to the Signet, gave similar testimony, and the summit of friendship was gallantly attained by Col. George Charles D'Aguilar, Deputy-Adjutant General of the Forces in Ireland, who had been in the service about forty years, and first became acquainted with the pannel in 1797 or 1798. "I was at school with him in the immediate neighbourhood of Birmingham, at the Rev. Mr. Corrie's, a brother of Mr. Josiah Corrie, who was examined as a witness. I was at a distance from my friends, and Lord Stirling and I were class-fellows. He generally stood immediately above me in the class. We formed a friendship for one another; and when he went home at the short vacations, he invariably took me with him to his father's house, so that I was in habits of great intimacy, not only with him, but with the other members of his father's family."

What was your opinion of them? — That they were of the highest degree of respectability. I may be a little prejudiced; for I was treated with such affectionate kindness and hospitality as I shall never forget. It was indeed unbounded, and I am here this day to repay it.

After you grew up in life, did your intimacy with Lord Stirling continue? — We were separated by circumstances. I went abroad, and followed my profession. I was out of England for many years — and in many parts of the world.

When did you renew your personal intimacy? — On my return from India, after a long course of service, I met him in London in 1829. I believe I had not seen him before since 1799.

Did you then renew your intimacy with him? — I did.

Have you continued ever since to be more or less in communication with him and his family? — We have kept up our intimacy by correspondence. When I was in London, I saw a great deal of him. I was frequently at his house, and he at mine. His children corresponded with my children, and I with him. He wrote to me about his claims; and there was no event of his life, more especially if connected with the proceedings regarding his title, which he did not communicate to me with the most perfect confidence.

From your long and intimate intercourse with Lord Stirling, what is your opinion of him, as a man of honour and a gentleman — as a parent and a husband? — I think my presence here this day is the best answer to that question. Nothing on earth would have induced me to stand where I do before this Court, if I did not believe Lord Stirling to be incapable of doing a dishonourable action. If the correspondence of an individual can in any case be relied on as an index to his mind and character, I have in my possession — in the letters of Lord Stirling — what will afford the best proof of his uprightness and integrity. His early letters to me I have not preserved; but latterly, and especially since he has had the misfortune to be placed in his present situation, I have heard from him regularly.

Notwithstanding this warm-hearted devotedness of a noble friend, the Solicitor-General animadverted in strong language, but not more than the conduct justified, on the unscrupulous means Mr. Alexander had had recourse to for raising money. "He was then a man of ruined fortunes — not having wherewithal to support himself and his family — a mere adventurer in the market; and I say it is utterly impossible for you to suppose that his proceedings were adopted in good faith. What would an honest man have done in his situation? He would first of all have had his right established in due form of law. But that the pannel could not do, for as to the honours, he was not in the line of descent in which the title flowed. And as to the lands, he was equally excluded by the terms of the ancient investitures. But the pannel cares not for this; but goes to the market with a writing now proved to be forged, and borrows money upon its security.

"Now, see what takes place in ordinary cases of this class, of which the records of this court are full. If a poor man goes to a shop with a bank-note, which is afterwards found to be forged, and gets silver or goods in exchange, and if he does this, first in one place, and then in another, and is at last apprehended with other forged notes in his possession, the very repetition of the act, and the absence of any satisfactory account how the notes came into his possession, are held to be convincing proofs of his guilt. But these are just the circumstances that concur in fixing criminality on the

pannel at the bar. From first to last, we find him uttering, for his own ends, documents proved to be forged: we find him persevering in this course, time after time, and notwithstanding checks and cautions of various descriptions, which, however innocent he might have been at first, could not possibly have failed to arouse his suspicions. Then, finally, we find him in possession of nothing throughout but forged documents, all calculated to advance his patrimonial interests, and all directly, and immediately, and unceasingly directed to that end. In what respect is he here distinguished, but for the worse, from the common and every-day utterer? And why, therefore, ought any different rule to be applied to his case?

"In December, 1836, the service of the claimant to William first Earl of Stirling had been set aside from a defect in the evidence of two descents which these documents went to supply. Nothing, therefore, could be so opportune as the appearance of these documents; without them the pannel's case was gone, — utterly and irretrievably gone. The pannel had hitherto proceeded on the idea that he was descended from a son of the marriage of John Alexander, the fourth son of Lord Stirling, with the heiress of Gartmore. But the extract of a decreet produced by the officers of state proved that by this marriage John Alexander had no son, inasmuch as it charges his *daughter* to enter heir to her deceased uncle, Gilbert Graham, whose heir she could not have been if she had had a brother. It was only through the discovery of these documents that the claimant came to the knowledge of the second marriage with Miss Maxwell. So far as the pannel's original claim went, and as far as he himself had ever ventured hitherto to support it, his whole title had been struck from under his feet. Is it not most important, then, in regard to the question of forgery, that just in this very nick of time all these defects of this title are supplied by these documents, — documents recovered in all manner of strange ways, — and bearing, by a coincidence all but miraculous, and the most extraordinary huddling together, signatures and autographs of men now dead upwards of a century ago, but who, while they lived, had apparently no natural connection with each other, as regards the matter in

which they are thus brought to concur? Is it credible that all these notes and memoranda, and attestations, and tombstone inscriptions, bringing into such strange and unaccountable society, Acadians and Frenchmen, philosophers, archbishops, and kings, should just at that moment cast up from an anonymous source, and all concur to support and advance this claim, being of no meaning whatever as to any thing else? The existence of all these things together, in the way we find them here, (and all are necessary for supporting the statements of the pannel), I say, cannot be accounted for on any ordinary application of the doctrine of chances; and hence I conclude that the whole is the result of an elaborate and preconcerted fabrication.

"There is another circumstance in strange and suspicious accordance with all the rest,—that, precisely at the time when Lord Cockburn's judgment rendered some additional effort to produce fresh evidence indispensable, a map of this kind, if not this very map, was anxiously sought after, and at length procured in Paris. It may be said that this is only another coincidence, and that truth is often stranger than fiction; but the too frequent repetition of such coincidences, all pointing in the same direction, is suspicious in the extreme. How does the pannel account for this map? It issues from the house of Le Normand with all the documents upon it. Have we any history in regard to it, which we can at all rely upon? It is said to have been brought to the house of Mademoiselle Le Normand by two ladies fashionably attired, and to have been left by them in her cabinet. There is a great deal of mystery affected on this subject—a dark allusion hinted to some minister of state. His letter, which accompanied it, gives this account of it: 'I have just learned, mademoiselle, that you take a lively interest in the success of an Englishman who claims, as a descendant of the Earl of Stirling, the inheritance of his ancestor in America. If the autographs which I have the honour of sending to you can ensure his success, I shall be delighted to have found an opportunity, by rendering him a service, of gratifying you, and at the same time discharging a small portion of the obligations which I owe to you. I regret, however, that the duties of an office

which I at present hold, do not permit me to make myself known in this affair of Lord Stirling's. You, who know a great deal about it, will feel no surprise that a man in office should not dare to interfere in it *openly*.'

"Now the map was worthless as far as French politics go. Where, then, was there any need for mystery about it? What danger could even an official personage run by making every possible disclosure respecting it? What impropriety did he commit by handing over such a document to the only person in the world to whom by possibility it could be of the smallest service? This map drops from the clouds, just as the excerpt charter had previously done, without a tittle of evidence to account for either; and just as the other documents also did, which subsequently came through the London penny post.

"The two forgeries being proved by a distinct and separate course of evidence, it is remarkable how strongly and directly in point of evidence these two forgeries themselves bear upon one another. If the excerpt charter of 1639 be a forgery, how important an element that circumstance must afford in the proof that the French documents have also been forged! You have then no trace whatever that such a charter as these documents are made to speak of ever existed. On the contrary, if the excerpt be a forgery, the charter itself falls to the ground. And if the charter of 1639 fall to the ground, how comes it, but by a double forgery, that you find on the map of Canada — a document brought from France, and produced for the first time in 1837 — all the important parts of that charter — so far as the change in the destination is concerned, (and nothing else could be of any use to this pannel), set forth *verbatim et literatim* with the terms of the forged excerpt? Assuredly, the one being false, so, necessarily and beyond all doubt, must, under such circumstances, be the other."

Mr. Robertson rose in anger "at the strange tone and style of the Solicitor-General — his strained argument — his pushing of the case — his twisting of the evidence, and of the judicial proceedings. But my duty to you, Gentlemen, and to the Court, compels me to restrain, and to keep back to the

conclusion, those feelings which, in spite of all my efforts, are at this moment rushing into my bosom.

"I proceed, then, to look into the case as calmly as my feelings, well-nigh overpowered, will permit me, trusting that that special Providence which watches over the interests of truth and justice will come to my aid, and assist and guide me in the arduous duty I have to perform — trusting that the light of truth will dart through the narrow crevices and shine into the obscurity and darkness in which this case is involved — confident that you will return no verdict either from 'cowardice or good-nature' — sensible that you see that the prisoner has undergone "the utmost rigour of examination' — aware that there has been a strict search for, and a careful examination of all his documents, down to that letter from his son, where there is a little scratch of a word torn out, in place of which the prosecutor has my permission to insert any word he fancies most — resolved, while the breath remains within me, to rebut the charges here made, and to express my confidence, that no ability or eloquence can *concuss* you to pronounce a verdict, which will doom this gentleman, hitherto of unsullied reputation, to such disgrace, that he shall bequeath no name or inheritance to his children but that of an outcast from society. I am thus confident, and thus resolved, because of all cases with which I ever was acquainted, I have seen none more weak, none more pressed, none, with deference, more inefficiently pressed, than this, the issue of which now rests with you."

Mr. Robertson disclaimed having any thing to do with the prisoner's pretensions to the earldom of Stirling, or his assertion of his right to create baronets. "If that were the question, he was not sure that he would not walk instantly out at that door [*pointing to it*] and say not another word. This was a charge of forgery and of guilty knowledge of the forgery, and of the prisoner's uttering the documents knowing them to be forged! The whole is charged as the act and deed of one man, the pannel at the bar, so far as the charter is concerned; and as regards the other documents, of this one man, with the aid of an old woman of seventy-five years of age! The pannel is alleged to have forged all the documents which

appear on the back of that map, some of them in French, others in English, in various handwritings, all bold and free (as one of your own number observed)—to have forged all these without an accomplice, and without suspicion; and not one of them is sworn to by a single man of skill, as resembling, in the remotest degree, the writing of the pannel or of Le Normand. Mr. Lizars, a Crown witness, on the contrary, has stated, that there is not a trace of his handwriting, nor of Le Normand's handwriting, in any of these documents. And this condition of the case at the outset, by virtue of chemistry, whereof more anon—by instituting a comparison of inks, whereof considerably more anon—it is contended that you must come to the conclusion, that the pannel, a man of unsullied character, or rather, as my learned friend seems to say, having got up a false good character for villanous purposes—like the man who was said to have fraudulently concealed his own insanity—forgetting all his former reputation, forgetting all his classical Latin at Worcester, forgetting the danger attending no fewer than seventeen different forgeries, forgetting his own handwriting, and suffering no trace or similitude of it to escape, has forged these seventeen documents, or got them forged by some one who is only conjectured of,—for the diviner, I suppose, was not aware how to frame a Scotch charter. You are called upon to prevent this gentleman from picking the pockets of honest men, who were willing to advance 13,000*l.*, taking bonds for 50,000*l.* in return. You are called upon by her Majesty's learned Solicitor-General, in an address of six hours, to investigate documents, the complicacy of which even I, lawyer though I be, shudder to look at—no fewer than thirty-eight documents, and Heaven knows how many processes to boot! and to wade your way through *quæquidems* and *reddendos*, and Chancery hands, and almost every science but the black art, in order to give a verdict against the pannel."

The clever counsel's sifting of the evidence was worthy of the spirited opening. He admitted that there was pretty good proof that the charter of 1639 was not entered on record. "But the paper before them was not a charter, and never was stated to be a charter. It was produced only as

an excerpt of a charter found in Ireland, and attested by Conyers. It lay in court for *ten years* unchallenged, deceiving, if it was a forgery, the wisest and the best-informed in knowledge of this description. Even if it were a forgery, an erroneous but genuine copy was a very different thing from a forged principal. Where did they find the 'Reg. Mag. Sig.?' It was at the top and on the margin of this copy; and Mr. Whytock, of the Chancery Office, stated it as his opinion, that the ink in the 'Reg. Mag. Sig.' was darker in colour than the body of the instrument. Macdonald differs, and thinks they are the same. If it was an *ex post facto* operation, all this criticism about the 'Reg. Mag. Sig.' and the colour and appearance of the ink vanished at once. But was it ever engrossed in the register? It was somewhat curious to observe, that a part of the register of that day was missing. Some blockhead thought that that part of the register had been carried off by Cromwell; some other blockhead has put that statement into the summons of proving the tenor; and his notion was, that some wag, or malcontent against Mr. Thomson's new regulation, stuck the new marking, 'Reg. Mag. Sig.,' on the old Irish-bungled copy; and on that simple theory, away went the whole effect of the City-of-Edinburgh charter, the register, and all the searches."

It would appear from a pamphlet subsequently published that his client was exceedingly affronted at the cavalier tone in which his counsel disposed of the blockheads who had committed more than a crime — a palpable blunder. But he knew well, as a lawyer, that there was no longer the most forlorn chance of success in the suit, and that he must clear the wreck, or the precious argosy on which Mr. Alexander had perilled fortune and fame must founder, and all perish together.

"But there was more here. It was said the *reddendo* is wanting. Most terrific circumstance! 'There never in the world was a genuine charter without a *reddendo!*' says Mackenzie. But when Mr. Thompson was asked if he ever saw an *excerpt* without a *reddendo*, he answered, 'Many of them.' There is another discovery made by the acuteness of one of their lordships, which is said to be fatal to this document. There

are in it the words 'Consanguineus noster,' which it is said are never applied by the Crown to a commoner. Gentlemen, we have heard of Scotch cousins, and there may be Irish cousins also, though the appellation be not altogether correct; and this is only an Irish excerpt of a copy of a deed, and nobody ever said it was more. There were certain erasures in the instrument, but Mr. Macdonald did not say that there was any thing suspicious about them. Why then, Gentlemen, should the Crown thus endeavour to bolster up a case by means of rubbings and erasings? Mr. Thomson said that the ink was too brilliant to be of an ancient date. If any one, meaning to prove a forgery, will rest his case on the appearance of the ink, he must be a bold man. But the paper was examined by Dr. Fyfe and Mr. Madden, two chemical gentlemen—a very unusual proceeding, which, fortunately for the prisoner, was resorted to under the sanction of the Court; and hereafter, unless professors of chemistry, and such like professional persons, be banished altogether from our courts of justice (and really their absence would be no great loss, either to civil or criminal jurisprudence), let them always be examined apart. I was not surprised at a difference of opinion between scientific men; for I lately saw professional men examined, one set of whom gave it as their opinion that the refuse of a dye-work renders the water of a river impure, while another maintained the reverse, and that the nearer you go to the place where the refuse issues, the purer the water becomes. Dr. Fyfe was examined before you, and stated the result of his experiments. The case of chemistry fell to pieces. There were some fine flourishes made about the colour of the paper, sulphuric acid, and old rags. But it all came to this:—Dr. Fyfe thought that it was not old paper, and Mr. Madden, on the other hand, thought that it was. In such a case as this, I am entitled to say, that these chemical experiments have resulted in the ascertainment of this document being written on ancient paper —contradicting the gentleman who had stated that it was not an old document, and that it must have existed only since 1806. Gentlemen, see the value of this discovery! Be it that there are many things of which I cannot give an expla-

nation here. The Crown attacks this document, maintaining that it is a new, and not an old document; and now, upon an analysis made of it by professional gentlemen, under their own direction, and in the sight of the Court, it turns out to be an old document. If the document be old, I care not whether it be sufficient to give me Canada or Nova Scotia. The case of the Crown has broken down; and that is enough for me.

"The charter was spoken to by Mr. Lockhart, as having been received hy him from the pannel in May, 1829. He had previously received a letter from Mr. Banks, of 10th April, 1829. I shall say nothing of what was in it, but refer only to its bearing the post-mark of that date. The Crown might have consented to its being read, if they had thought proper; but they did not, and of course it was not read to you. It was closed and sealed up from you by the forms of law. But in consequence of it, Mr. Lockhart told you, he went to Netherton House, and with Mr. Corrie, and the charter, he proceeded to London, and when there, acting under the authority of the pannel, he went with that document to the Lord Advocate, Sir William Rae. When a thief steals an article of value from a dwelling-house, does he run straight with it to the police-office, and exhibit it there? When a forger commits an act of forgery, does he seek refuge from the consequences of his guily act in the gentle arms of the public prosecutor?

"With regard to the second charge of the indictment, in relation to the French documents, ten in number. Not one of these ten documents was ever seen in the possession of the pannel: not one of them. Not one witness is brought to swear that any of these documents resemble his handwriting. Though there might be strong reasons for holding that the map did not exist till after 1718, they may be overset by stronger reasons, — reasons inherent — intrinsic — insuperable." He would illustrate his meaning thus: Suppose the water-mark on a sheet of paper to be 1808, and suppose the writing upon it to bear the date of 1806, the authenticity of that writing immediately on its production would be gone, unless it could be proved by some device or other that the

piece of paper was manufactured of a false date. The paper speaks the truth there, and falsifies the date of the writing.

"They had not produced an authenticated search, certifying that no commission appears on the records before that one in 1718. They had not proved that this was the first commission in favour of Delisle which was there registered. Their case rests entirely on that assumption; and it is gone. It is possible that Delisle held a prior appointment. He would illustrate this. We had a question in the Civil Court about a date; I think it was tried before my Lord Mackenzie in the Jury Court. The question was, whether a lady, whose residence was in the Highlands, died in 1802, or not. We had a register, Gentlemen, of baptisms and burials; but from the defective manner in which that part of our records has been kept in times bygone, they could not be relied on as authentic evidence. We therefore had recourse to parole testimony; one set of witnesses produced their marriage lines of a particular date, and said that she died before that; another set produced their discharges as soldiers of the same date, and said she died after that — each of them resting their testimony on the impression that these events had made on their memories. Neither of these modes of proof was held conclusive, and the jury had to weigh in the scales on which side the evidence preponderated. Then they tear off John of Antrim's tombstone inscription from the map; and they find a certain letter there under the tombstone. Oh! how they would have chuckled, if this marvellous new discovery had resembled the writing of Mallett or Alexander! But Mr. Lizars says he does not think this letter resembles the documents signed Ph. Mallet and John Alexander, either as to the colouring matter or the character of the handwriting. As to the handwriting of Louis XV., that of Fénélon and Flechier which appeared *ex facie* to have been written by these individuals on this map, these were names famous in history, and their writing was well known, and could be easily proved. But be pleased, Gentlemen, to look at the map for a single moment. You see the writing of Flechier of Nismes. The handwriting is very uncommon. It is German text, and very

stiff. The writing of Louis XV. is quite plain. This is a presumption in favour of the genuineness of both. We produced a young man who had seen treasured up the handwriting of Louis XV., and knew it by the resemblance. 'Ah,' but say they, 'you are an adept in forgery, and the resemblance is of no importance.' Assume that, and there is an end of all argument. But the question is, is it a forgery? Have they proved it to be a forgery? Have they asked so much as a single question of any witness as to the handwriting of Louis XV., or of Flechier, or of Fénélon? Not one. Then they try to make further discoveries — they tear off the tombstone of John of Antrim, and they dig up the ashes of the dead. (Rather wild rhapsody!) But they find this of no use to them, any more than the documents. All is a blank. But then they tell me with a sneer that I have made it very like. Gentlemen, if it had been made very unlike, they would have told me that that was conclusive evidence of the forgery. Everything I do is wrong. To the jaundiced eye all objects are yellow; but to the bright piercing eye of truth every thing is as clear as day. Gentlemen, have they cut down this map fairly and finally, and scattered it to the winds? No, Gentlemen, the poking and peeping, and glass-working, and experiments, and chemistry, I cannot away with. I hate all the trickery of science. A plain man judges for himself whether a document be a forgery or not. Look at Flechier and Fénélon's letters yourselves. You are as good judges, in my opinion, as any engraver that ever scratched on copper.

"The public prosecutor had the hardihood to rely still on the charge of forgery of the words on the parchment cover, 'Some of my wife's family papers.' Though well warned by the suggestion of the Court, he answered that he did. To my surprise he made that answer. I will venture to say that no such demand of a verdict was ever before made on such evidence. We have proved the handwriting of William Humphreys on that parcel, by the evidence of Mr. Corrie, who identified it as his handwriting, which was well known to him. I say it has been proved to be genuine — so genuine, that if we were here in a civil process, it would be admitted as sufficient evidence. How can we prove the handwriting

of a dead man, but by those who knew it? This gentleman, whose very poverty has been ridiculed, was unable to contend with the Crown in bringing evidence here. They, indeed, have swept the friendly shores of France in search of evidence, and brought here a battalion of witnesses. In that we had not the power to contend with them. But we brought what we could; we brought one sturdy English gentleman, a witness in my eyes worth more than fifty French porters; and he says that the writing on that packet is genuine. If you find a verdict for the Crown on these English papers, there will be room for saying that you have had a lesson from Mademoiselle Le Normand in the black art. If all my arguments on the forgery are to go for nothing, to be buried in the tomb with John of Antrim, I have a case behind impenetrable as a wall of adamant. I refer to the charge of guilty knowledge of these documents having been forged, and of using, knowing them to be forgeries. Guilty knowledge, Gentlemen! Where is there the least room for laying such a charge? That charter of 1639 never raised the slightest suspicion even to the practised eye of Mr. Lockhart. It was taken to the public accuser, and submitted to his inspection. Did Sir William Rae, the Lord Advocate, entertain any suspicions of it? He did not. If he did, he did not do his duty to the public, by delaying to challenge it as a forgery. And is the pannel better instructed in such matters than Sir William Rae? The charter is produced in court, and is there openly exhibited; and there is not the slightest pretext for charging us with guilty knowledge of its being a forgery. It remained in court more than ten years unchallenged. It was fingered by the counsel and the clerks of court. It required more knowledge than was possessed by the learned Judges who saw it, to discover that it was a forgery. And it required even to go through a process of chemistry before the Crown lawyers could make up their minds upon it. Gentlemen, if it deceived them, is it to be wondered at that it might deceive that man? But it is said that he raised money on that forged charter. He,—with nothing but that forged charter in his hands—he took in the knowing ones of London, and swindled them out of their money! and, by giving

them bonds to the amount of 50,000*l.*, of payment of which they were willing to take their chance, if he succeeded in his claims, he got them *to fork out* (!) the value of 13,000*l.*, in old pictures of great price, and other commodities! Honest dealers! most innocent and ill-used swindlers! On that document alone, this adept in Scotch conveyancing, this learned pundit in black letter, this man skilled in Chancery Latin,—he with his charter swindles the Jews, and deceives the Lord Advocate, by putting into his hands an instrument said to be a palpable forgery, for uttering which, in those days, he might have been capitally punished.

"If he had dealings with Mademoiselle Le Normand, where is she? By their theory, she was an accomplice, if not the perpetrator of the forgery. Why was she not called as a witness? why had they not brought her there? They were entitled to see this French sorceress, when this iniquity is said to have been done in her house! Where, above all, was a lady whom he saw in the Crown list,—'Amédée Melaine Fontaine, lately residing at No. 2, Rue de Tournon, Paris, and now or lately residing in India Street, Edinburgh,'—where is she? Is she in Scotland or not?"

To save his client, the counsel pitched him over as a man of talent. "Is he a man of ability? it is asked. Rather an unusual question; but it was put, and Tyrrell answered, Certainly, a man of great ability. A man of ability! A believer in the black art in the nineteenth century! While in Paris, he consulted Mademoiselle Le Normand, who told him his fortune on the cards; and Tyrrell has said, that he did not think the pannel meant it as a jest, when he informed him that Le Normand had told him his fortune. Gentlemen, if you credit that, you must have an extent of credulity that goes beyond belief. He may have ability; but the extent of his gullibility is beyond parallel. Cut the cards for future earldoms! Why, Gentlemen, it is a farce to talk of it."

Mr. Robertson dwelt, in conclusion, with much force on the character of the accused. "Is it nothing, think you, to have the character of a kind husband, an affectionate parent, a warm-hearted friend, and an honest man? In a case of doubtful evidence—which this is—character is everything. You have heard the character given of my client both at the

beginning and the end of his career. And you have seen it —a moral spectacle unexampled in the annals of a court of justice—in the conduct of the gallant officer who now sits beside him, and whom I should be proud to call *my* friend. You heard, Gentlemen, yesterday, the testimony given by that gallant officer, in strains of manly eloquence, in behalf of the associate of his boyhood, and the correspondent of his riper years. With the spirit of a British officer, and the pride and generosity of a British gentleman—not like the cold world turning his back upon his friend in the day of his perplexity and distress, but recollecting what had passed betwixt them in early youth, and seeing with interest the rising friendship of their children,—he thought of nothing but how he could comfort him in his hour of danger. He saw his frail bark tossed among the breakers; he rushed to its succour; and he will bring it in safety to the desired haven. The contemplation of that spectacle, Gentlemen, was a requital to me for all my anxieties here, and must have been equally gratifying to you; and the embrace which these two men shall have when this trial is over, and they quit that bar together, as I feel they shall, is a pleasure that I envy that gallant officer more than all the treasures of wealth, or the laurel that adorns his brow. Gentlemen, do not think of the character of the pannel as a light thing. I fully anticipate his acquittal at your hands from this heavy charge, as being as certain as that I am now addressing you. When I look back on the life of this unfortunate man, I see nothing but anxious days of heart-sickening hope, and sleepless nights of feverish rest, disturbed and chequered by golden dreams that were speedily dissipated by the rays of the morning sun—a rising family, taught to look on nobility and wealth as their birthright, yet seeing nothing but penury and distress before them—calling to their parent for bread, and lo, he has nothing to give them but a stone—

> "Lo! Poverty, to fill the band
> That numbs the soul with icy hand,
> And slow consuming Age."

And when I look forward to the future, I trust I see a prospect that his mind shall be directed to pursuits more solid,

and to the attainment of objects more consolatory and enduring. Let the visionary coronet be plucked from his bewildered brow—let the prospects of wealth and of courtly titles and honours vanish into air; but, oh! gentlemen, leave him that best and highest title of nobility—his good name; let his character remain to solace him on retiring from the fatigues and bustle of this vain and transitory world. Gentlemen, I am one of those who venerate the memory of the illustrious dead—of those whose prejudices, feelings, and principles unite in admiration of hereditary rank and high title, conferred, as the reward of patriotism and virtue, upon those whose names adorn the page of history, and who are enrolled amidst the nobles of the land; and I also venerate those of more recent name, who, from their valour, their piety, or their learning, have been added to grace that august assembly. But without truth, integrity, and honour, titles and distinctions are worse than nothing. Without these, the glitter of the coronet hath no splendour in my eye—the rustling of the silken robe hath no music in my ear. On the tarnished ermine I trample with contempt. Do not, Gentlemen—do not add to the pangs of this man more than he deserves. Leave him in possession of that character which he has hitherto enjoyed, as his only solace under his heavy trials. Leave him that, without which the crown itself is but a bauble, and the sceptre a toy; for in my conscience I believe him innocent of the crimes here charged, and to have been merely the dupe of the designing, and the prey of the unworthy."

Lord Meadowbank drew back the attention of the jury with great ability to the real merits of the case, and laboured hard to efface the impression which the pathetic appeal of Mr. Robertson could not fail to make. There is one evil resulting from counsel pleading for prisoners, that it compels the judge to warm into the advocate, and unconsciously to imbibe the spirit of a partisan. He had been inoculated with a strong opinion of the pannel's guilt (who can read the curious collection of proofs, all culminating to a point, without adopting the same impression?), and he took no pains to conceal it. "Gentlemen, the question of forgery, where the instrument, such as that here mainly in question, has not been seen in the

act of fabrication, can only be determined by facts and circumstances. And the proof must consist not merely in examining the writing itself, the formation of the words, and even of the letters in it, — all that is intrinsic and within the four corners of the document itself; but there are other circumstances which must be taken into consideration. You must also look to the substance of the instrument, — whether there be any thing peculiar in its nature, the mode in which it is framed, and the place in which it is recorded, or ought to have been recorded. All these things it is your duty, calmly, and deliberately, and seriously to consider, and you are not to be led away by dividing all these circumstances, as has been done with great ingenuity and address by the pannel's counsel, and stating them one by one, and putting the question — is this enough? or is that enough to establish the charge of forgery? — and in that manner dissecting them, and destroying their connection and bearing upon each other. The point for your consideration is this — and you will consider it calmly and dispassionately — if there be found in an instrument, such as that lying before you, a number of circumstances combined, which are not in general found in such an instrument, which are nearly incompatible with it as a genuine instrument, — you must weigh the whole of these particulars together, and then put to yourselves the question, can you, or could any men of sound reason, arrive at the conclusion, where there has been so extraordinary a combination produced, as would require almost a miracle to bring it about in a genuine deed, that such has or has not been the result of falsehood and forgery.

"Gentlemen, a good deal was said at the commencement of this trial, in regard to the singular appearance of the paper on which this excerpt from the alleged charter is written, but which the witnesses found it difficult to explain. Now, it is my duty to observe to you, that impressions made by such appearances on the minds of persons of skill, at first sight, are often of great weight. There are some things which cannot be proved by evidence, or even explained, and yet in regard to the truth of which you may, without the aid of any evidence either written or parole, be at once quite satisfied.

For example, take the case of a letter of your own, which you have written some time ago. It is laid before you. You cannot tell why you at once recognise it to be your own letter, but you know it as certainly to be your own handwriting, as you would know the face of your familiar acquaintance; yet you can give no good reason for the conviction of the certainty either of the one fact or the other."

After holding up the fabricated copy of the charter *novo damus*, with all its imperfections on its head, and exposing each defect to a keen scrutiny, he added this result, so damning to the case of the prisoner: —

"For my own part, I feel myself bound to state, that I have seen nothing and heard nothing in support of its authenticity. It may, no doubt, be true, that, taking the points separately, it may be possible to roll off one objection after another; but there is here a coincidence and union of objections, which you may find it difficult not to hold as sufficient, to create a conviction of the impossibility that they could be found in a correct extract, taken from a genuine deed."

The objections to the map of Canada are, if possible, still more stringent. The judge dissected the dead body of the instrument, and "thrice he slew the slain." He noticed circumstances full of suspicion, which had escaped the sharp observation of the Solicitor-General. "Observe the dates, Gentlemen. It is in the year 1702 that the residence in Acadia is fixed, and it is in 1706 that the gentleman who is supposed to have written this note, describes this document as an ancient charter. You will observe here, that in 1702 the alleged charter *was only sixty years old;* and I ask you, whether to a document of only sixty years old, you ever heard the term '*ancient*' applied? No doubt, sixty years form a long era in the life of man; but I doubt if that term ever was applied to a space so brief in the history of the race.

"Such reflections could not have entered the mind of a Frenchman in 1702; and I firmly believe that, until the project entered the mind of Lord Chatham in the middle of the eighteenth century, the notion of an attempt to recover, or rather to acquire, these provinces for Great Britain, never

suggested itself to the mind of any rational being. It would be strange, indeed, if it had formed the subject of lucubration to M. Mallet, or his friend M. Lacroix, in the year 1702. You will also think it strange that the charter should have made a voyage to Acadia, and been there recorded, instead of having been put upon record in Scotland, where it is supposed to have been granted. No doubt the charter conveyed estates in Scotland and estates in Canada; but while the former were within reach and easily accessible, those in Canada and the state of Maine, from those territories being in the hands of the French, were altogether out of the reach of the grantees. In these circumstances, you are required to believe that the Earl of Stirling, in place of retaining this charter in Scotland, and getting it recorded and perfected there, where he might have got something by it, carried it to Canada, and had it recorded, where he could get nothing, and where, except as a matter of curiosity to men like Monsieur Mallet and his friend Lacroix, it was altogether a piece of waste paper.

"Is it credible that if Sir William Alexander, created first Earl of Stirling, had really got such a charter, and had wished to change the destination of his estates (and we know that he was a person of no ordinary talents), he would have omitted taking means for preserving in his own country the evidence of what he had done?

"I cannot waste your time, Gentlemen, in dissecting these documents farther. You will yourselves read them, and you will consider whether there are or are not grounds to be found in their own composition, for entitling you to hold that they were fabricated *ex post facto*, and fabricated, too, with the object and for the purpose of supplying those links of testimony, which the Lord Ordinary had pointed out in his note as wanting in the pedigree of the pannel."

The discovery of the documentary extracts from a pretended letter of Fénélon, covered over on the back of the map, furnished the most satisfactory evidence the judge had ever seen of the progress and detection of a palpable forgery. "The conduct of the prisoner with regard to the map was almost as suspicious as the map itself. But mademoiselle

refusing to give up the map, the prisoner, strange to tell, and more difficult to believe, returned to England, leaving all this evidence of his titles and his fortunes behind him, in the hands of a common adventuress, on whose honesty even it is harly possible to imagine he could have placed any reliance. This is certainly very extraordinary, if it be at all credible. Here is a gentleman claiming great estates, and carrying on a lawsuit of no ordinary magnitude. Judgment goes against him, stating the grounds on which it proceeds, and pointing out the defects in his case; but he says he left the country in this very crisis, entirely ignorant of that judgment (though expected) or the grounds of it — he goes to Paris, where he has that production exhibited to him, which would at once have removed all objections to his title; yet he again travels off, leaving in the hands of a common fortune-teller the document on which his future fortune depended. This is certainly the most extraordinary conduct ever met with in any party, or in any litigant. Nor is this all; for he next sends his son over to Paris, who procures the map without any other inducement for its delivery than the receipt, as we are desired to believe, of the prisoner himself, to whom it had hardly a month before been peremptorily refused. Nor will it escape your observation, Gentlemen, and I press it upon your attention, that the person sent as messenger on this most confidential embassy was the prisoner's own son."

With regard to the writings left at De Porquet's, and taken to be opened before a magistrate instead of being forwarded to their destination in the usual course, Lord Meadowbank deemed such a proceeding altogether incomprehensible upon any supposition but one; and that is, upon the notion that the contents of the packet were not unknown to some of the performers in the drama before it ever entered the shop of De Porquet; and read with emphasis the concluding lines of the letter: the folds are uncoiled, and the snake in the grass lies revealed. "*You will see that the inscription is now made a good document,* being confirmed by the letters of B. Alexander and A. E. Baillie. *The cause is enrolled to be heard on the* 31*st day of May.*"

"Both sets of documents bore the same stamp of forgery,

and it was impossible to disconnect the reference to the inscription and the alleged genealogy of the one from the fabrications on the map, or to fix a character of fraud on the one series of instruments which must not also belong to the other. Both sets of documents were exactly calculated for making up those defects in the chain of evidence, pointed out by the Lord Ordinary. Both, at their first production, issue from the hands of sons of the prisoner. The one set, accompanied by an anonymous letter, is said to have been transmitted by a lady of whom nothing whatever is known, and who has never been discovered; and the letter, therefore, which purports to bear her name, may, without any great inaccuracy, be said to be anonymous; and the other, as if by a miracle, is about the same period left at the house of a female fortune-teller at Paris, accompanied by another letter, anonymous in the strictest sense of the word, and by two females, of whom also we are told nothing, and respecting whom everything is left in mystery and in darkness. These coincidences cannot fail to strike you as altogether marvellous."

The somewhat astute attempts of Mr. Robertson to create a false impression met with a deserved rebuke. "He expressed regret at the judgment of the Court as to a certain certificate not being allowed to be produced. It is always matter of deep regret to me, when I see counsel make such statements, or when I see them make propositions to the Court for the admission of evidence, which they do not believe the Court can entertain. I regret it on this account, because I think it diminishes the just weight which, in all cases of this kind, ought to be the result of such proceedings on that side of the bar, when it is felt by juries that such propositions are not hazarded lightly, and without just grounds for their being preferred. When made otherwise, they only tend to diminish the legitimate effect which, on proper occasions, such applications may tend to produce; but when made for the purpose of being rejected, and merely as affording an opportunity for creating a sensation in the audience, they can have no effect with a Scottish jury. They know that the refusal to receive such evidence is for the ends of justice, resulting from rules established to protect the

accused if he be innocent, or, even should he be guilty, to prevent his suffering by the introduction of illegal evidence. In this very instance to which the eloquence of the learned gentleman was directed, I shall say no more than this, that in rejecting the evidence in question, the Court had an opportunity of seeing how important it was to persons in the position of the prisoner, that these rules should be invariably enforced."

Upon the main point, who was the forger, Lord Meadowbank directed their attention to a circumstance which appeared to him of the last importance, but which had not attracted the notice of the counsel for the Crown. "You will recollect that there is the impression of a seal (which I now point out to you), and which it is said (though the object in so doing is not explained, and which affords, in my view, another circumstance of evidence in support of the allegation of the whole being a fraudulent fabrication) was cut off the letter of John Alexander. The prisoner in his judicial declaration is interrogated 'if he had examined the seals upon the packet above mentioned? Declares that he has not, and is not certain that he ever saw them.' He had seen that seal many years ago, not later than 1825. *It is in the possession of his sister, Lady Elizabeth Pountney.* Now, Gentlemen, there are seals on that packet, and there is the seal on the back of the fabricated map. He admits that the seal on the packet is taken from a seal in the possession of his own sister, and that he saw it in 1825. That is his admission. Now, if you will examine them, you will find the impression of that seal on this fabricated map corresponds exactly with the seal on this packet. 'Interrogated whether the seals on those two productions are, in the declarant's opinion, impressions of the same seal with those attached to the document, No. 83 of process? *Declares that he thinks they are the same.*' Now, Gentlemen, supposing that there was not another tittle of evidence in the case, to connect the pannel with these proceedings, see what this amounts to. You find that a link of the evidence of his pedigree is discovered to be wanting in December, 1836. You have seen that, at the time when this was pointed out, or immediately

thereafter, the prisoner is found in Paris. There he says he continued till August, 1837. During this short interval he is brought into immediate and close connection with this mass of fabrications—fabrications of no earthly use or moment to any human being but himself, and having among them the impression of that seal, which he admits to be in the possession of his own sister. Gentlemen, suppose that the name of Mademoiselle Le Normand had never been heard of in this case; I leave it to you to consider whether the irresistible inference is not, that that seal could only have been appended by the person in possession of the seal, and, at least, that that person was within his own domestic circle."

The fact of an Englishman calling on Leguix to purchase a map of 1703, told strongly, the Judge thought, against the prisoner. "It is certainly a strange circumstance that, when these forgeries were fabricating, and fabricating, too, on the back of a map of Canada, a map of this very description should have been the object of such anxious inquiry and research. Old maps of Canada can form objects of curiosity to few, and of utility almost to none. And most certainly the coincidence is at least remarkable. I remember a great and important case that occurred in this country, where the fact of a child being missing from an hospital in Paris, went to attach suspicion to the birth of an individual of high rank. It turned out, to be sure, that the fact did not operate on the ultimate decision of the case. But that, under the circumstances, such a fact was competent and legally rested on in the chain of evidence, no one doubted; and so what have you here? You have evidence that the pannel remained in France during the eight months these fabrications were concocting. A map of Canada, bearing the supposed date of the year 1703, and corresponding with that before us, was purchased by an Englishman from Leguix, but which map could not have been engraved till 1718. During these eight months, in short, while the pannel was in Paris, this map, or one resembling it, and which has the forgeries on the back of it, was disposed of by Leguix. It is for you, Gentlemen, to consider, when you look to the other parts of this case, how far this operates against the prisoner.

"The prisoner's visits to Mademoiselle Le Normand, what could they mean. Who is Mademoiselle Le Normand? The pannel informs you that he had a high respect for her; that he has known her from 1812. *We* know, from the evidence before us, that she is a notorious fortune-teller in Paris, and that he had been trafficking with this woman as far back as the year 1812, because he says she had been from that period in the constant habit of advancing money to himself and his wife."

The Lord Justice Clerk animadverted severely on the contradictions and equivocations in the prisoner's statement respecting her. The whole story forms a mass of contradictions. "I cannot doubt that this evidence must satisfy you of at least two things,—first, that during the six or seven months during which this forgery was in execution —for if forgery it is, that must have been the era of its fabrication—the prisoner, living under a false and assumed name, was all but domesticated with the old fortune-teller, from whose hands it is admitted to have issued immediately thereafter. Secondly, you must be satisfied, that during that period he had various money transactions with that individual;—first, he paid her five Napoleons for telling him his fortune (a fact how to be reconciled with that of her having, instead of taking from him, been in the practice of advancing the prisoner money, I know not); secondly, he sent her 10*l.*; and then gave her the great obligations you have seen he has admitted, 400,000 francs, payable palpably on the event of his succeeding in his claims on the earldom of Stirling. In short, Gentlemen, it must now be plain to you, that after all endeavours at concealment have failed, the prisoner is proved, during the whole momentous period in question, to have been constantly engaged in negotiating with this sybil—this notorious adventuress in Paris, to whom at least *the uttering* of these forged documents has been traced —a person obviously of the worst character, and who, although she says that a lie never passed her lips, is proved to you to have had no profession but that of fortune-telling —no means of subsistence but that of imposture, and of telling falsehoods from morning to night—one of those whom the prisoner's counsel adverted to, in the close of his address,

as 'the designing and the unworthy,' who had made his client their dupe and their prey. What is to be the effect upon your minds of all these circumstances, when you come to form your opinion as to the knowledge of the prisoner of what was then in course of fabrication, I cannot tell; on mine I am bound to state that the effect has been most powerful. What other impression can be made by the correspondence of the Parisian dame, writing letters also to Lady Stirling, telling her how she had been *brazening* it out to others that the pannel was not in Paris, though she knew that he had been there, and that she herself had seen him almost every night. This letter, coming from the prisoner's repositories, is important, to enable you to see what was the nature of the connection which subsisted between them, and that fraud and falsehood formed the basis of their communications. Nor is this all. For these productions sufficiently demonstrate Le Normand's anxiety to avoid investigation. 'The documents,' she says, 'may turn out to be false; then why investigate?' plainly exhibiting her own dread of the result."

In adverting to the exculpatory evidence, his Lordship related an interesting anecdote. "I may remark, Gentlemen, that it is no imputation on any one, that a forgery well executed should not be immediately detected. This occurs daily, and it would be strange if it were otherwise. I recollect a case of forgery that occurred about thirty years ago — the case of a person named Alexander — and that coincidence in the name has probably brought it to my recollection. A tailor in Ayr had learned that a person of that name, and which was also his own, had died, leaving considerable property, without any apparent heirs existing. He got access to a garret in the family mansion, and it was said, found there a collection of old letters about the family. These he carried off, and with their aid fabricated a whole mass of similar productions, which it was said clearly proved his connection with the family of the deceased, and the Lord Ordinary decided the cause in his favour. The case, however, was carried to the Inner House by a reclaiming petition. When it came into court, certain circumstances led me, then

a young man at the bar, to doubt the authenticity of the documents. One circumstance I recollect was this, that there were a number of words in the letters, purporting to be from different individuals, spelt, or rather I should say *misspelt* in the same way, and some of them so very peculiar that on examining them minutely, there was no doubt left on my mind, that they all came from the same pen, and were all written by the same hand. The case attracted the attention of the Inner House. The party was brought to the Clerk's table, and was examined in presence of the Court. He was desired to write to dictation of the Lord President, then Lord Justice Clerk, and it so happened that he misspelt all the words that were misspelt in the letters, in precisely the same way; and this and other circumstances proved to demonstration, that he had fabricated all of them himself. He then confessed the truth of his having written the letters on old paper, which, if I recollect, he had found in the garret; — and what is instructive is this, that this result was arrived at in the teeth of the testimonies of half a dozen engravers, all saying that they thought the letters were written by different hands.

"You must, it appears to me, in considering the evidence in support of the charge of uttering the charter, knowing it to be forged, take it in connection with that, by which it is established beyond all question, that the great variety of other documents which he uttered were also forged, and determine then how far his connection with the whole of these is, or is not, utterly irreconcileable with the pleas which have been maintained in his behalf.

"Gentlemen, the prisoner may have been a dupe in all these transactions, and so his counsel, I think, endeavoured to persuade you that he had been. This is possible, no doubt; but we have only an ingenious surmise in support of the proposition, while you have it clearly made out, that the only party who enjoyed the fruits of the imposition is the prisoner himself.

"I have never bestowed more attention upon any case than I have done upon this, and in none have I ever summed up the evidence with greater pain. It is impossible, after some

of the scenes that have passed before us, not to have found one's feelings strongly excited, and to be deeply sensible of the painful position in which the prisoner is placed. But neither you nor I can allow ourselves to be misled by such considerations. Our business is to do justice, and you in particular have to weigh the evidence calmly and deliberately; and should you doubt of that evidence being sufficient to bring the charges here made home to the prisoner, to give him the full benefit of that doubt. But to entitle you to do so, these doubts must be well considered, and the circumstances on which they are founded deliberately weighed. To doubts that are not reasonable you have no right whatsoever to yield. You are not entitled to require at the hand of the prosecutor direct proof of the facts laid in his charge. In no case can such be exacted. The circumstances laid in evidence must be put together, and it is your duty then to consider, what is the rational and reasonable inference to be drawn from the whole of them, — in short, whether it be possible to explain them upon grounds consistent with the innocence of the party accused; or whether, on the contrary, they do not necessarily lead to a result directly the reverse. That this is a most serious case for the pannel is unquestionable. The charge, as laid against him in this indictment, might but a few years ago, if proved, have brought down upon him a capital punishment. That law, however, is now at an end. The punishment that can now be awarded by this court does not extend beyond an arbitrary punishment. But I will not disguise from you, — on the contrary, I state it as an additional reason why you should calmly and deliberately go over and weigh the evidence, that a punishment of a very severe description must take place, if you find a verdict against the pannel. Neither you nor the Court are responsible, but the law, and the law alone, for the punishment that may be awarded; and because the law may give a punishment far more severe than you may think the crime requires, God forbid, Gentlemen, that you should forget the obligation of the oath under which you are acting, from any views or considerations whatever; or that, although the punishment prescribed by law may not be suited to your opinions, you should

in your verdict arrive at any conclusion but what the evidence justly requires."

The jury retired at eleven o'clock. After being absent about five hours, they returned into court, when the following verdict was announced by George Hogarth, Esq., their Chancellor, —

"The jury unanimously find it proved, that the excerpt-charter libelled on is a forged document; and by a majority find it not proven that the pannel forged the said document, or is guilty art and part thereof, or that he uttered it knowing it to be forged.

"Unanimously find it proved, that the documents on the map libelled are forged; and by a majority find it not proven that the pannel forged the said documents, or is guilty art and part thereof, or that he uttered them knowing them to be forged.

"Unanimously find it not proven that the documents contained in De Porquet's packet are forged; or were uttered by the pannel as genuine, knowing them to be forged."

"Unanimously find it not proven, that the copy letter to Le Normand, in the fifth and last charge of the indictment, is either forged, or was uttered by the pannel as genuine, knowing it to be forged.

[The announcement of the first paragraph of the verdict was received with a burst of applause from the audience, in consequence of which the Court immediately ordered the gallery to be cleared.]

After the Chancellor had delivered the verdict of the jury, the pannel fainted, and was carried out of court to an adjoining room.

During the reading of the verdict and consequent sentence of dismissing the pannel from the bar, the curtain dropped upon this most interesting forensic drama. The claimant's pretensions to the Stirling peerage were of course at an end.

THE TRIAL

OF

WM. SMITH O'BRIEN

FOR HIGH TREASON,

AT THE SPECIAL COMMISSION FOR THE COUNTY TIPPERARY,

Held at Clonmel, Sept. and Oct. 1848,

BEFORE THE RT. HON. THE LORD CHIEF JUSTICE BLACKBURNE; THE RT. HON. LORD C. J. DOHERTY; THE RT. HON. MR. JUSTICE MOORE.

Counsel for the Crown: The Rt. Hon. *J. H. Monahan,* Attorney-General; *John Hatchell,* Esq.,Solicitor-General; Mr. *J. S. Scott,* Q. C.; Mr. *M. R. Sausse;* and Mr. *Lynch.*

Counsel for the Prisoner: Mr. *Whiteside,* Q. C.; Mr. *Francis Fitzgerald;* Sir *C. O'Loghlen;* and Mr. *T. H. Barton.*

THE trial of the Rev. W. Jackson in 1794, was the first prosecution for high treason which had occurred in Ireland during upwards of a century. It might be deemed an awful and ominous commencement, for the convicted clergyman anticipated the shame of the scaffold by taking poison, and sank down dead in the dock when his counsel were urging insufficient reasons before Lord Clonmel, for arresting the judgment. This long abstinence from the most fearful of State Trials, was amply compensated by the subsequent frequency of their recurrence. In 1795, 1798, and 1803, their number, extent, and the enormity of the treasons charged, real and direct, not artificial and constructive, involving rebellion and civil war, exceeded all that had been witnessed in the sister kingdom from the period of the Revolution; and the five Special Commissions that have been issued since, and the memorable State Prosecutions of 1848–9, entitle unhappy Ireland to

take a mournful precedence in the magnitude and interest of her deadly forensic combats. You might, to use Jebb's illustration, track Ireland through the State Trials as you would follow a man severely wounded through a crowd—by blood!

A painful peculiarity in the law of evidence, a distinction not less odious than unjust, was too long suffered to prevail between the laws of the countries, that in Ireland one witness uncorroborated sufficed to convict a prisoner of high treason. A spirit of truth pervaded the rhetorical remark, that the breath which cannot even taint the character of a man in England, shall in Ireland blow him from the earth. The peculiar characteristic of the national character, his quick imaginative faculty and keen sensibility, converting every witness into a partizan, enhances the pernicious effects of this most impolitic and cruel distinction. The Irish witness sits on the table as in a chair of state, and from his conspicuous position seeks to win applause by the dexterity and talent with which he plays his part, by the skill with which he baffles and confounds an opposing counsel, and the ingenious colouring that he throws on the views of his supporters.

By the just, no less than humane interposition of the late Lord Holland, this startling anomaly in the laws of evidence, the more odious as the informer in Ireland has always played a more prominent part than in the colder atmosphere of an English court, was at length abolished by the statute 1 & 2 Wm. 4, c. 18., which requires in Ireland also *two* witnesses to the overt acts of the same treason. It were well if another invidious distinction so forcibly descanted on by Mr. Whiteside were also removed: the not furnishing to a State prisoner, ten days before his trial, a list of the witnesses and a copy of the jury panel. The plea of insecurity to life ought not to be permitted to prevail. Our laws cannot be described as perfectly equal between the two countries, when, upon a matter of such vital importance to the prisoner's defence, there would be a mistrial in the one country if he were not furnished with these means of information at least ten days before arraignment; whilst in the sister isle not even after arraignment is the privilege conceded. The English sup-

posed traitor has full opportunity for inquiry into the description and business of each witness; the Irish is not permitted to know the name even, till started in ambuscade. In all other respects, the sole difference between the trials in the two countries arises from diversities in the national character and genius.

In the eloquence of pathos, in the poetry of imaginative rhetoric, in the wit and humour of cross-examination and turning to account the dramatic episodes that diversify ever and anon the Crown Court, the Irish are pre-eminent above the English State Trials. They are also distinguished for their profundity of legal lore, and the daring, almost Quixotic temerity with which the prisoners' counsel seek to quash the proceedings by challenging the array, imputing partiality to the sheriff, objecting to the validity of the commission, assailing the jury panel, leading any forlorn hope with a rashness which is in general justly punished by its total defeat. Another characteristic, and a painful one, still more prominent, derived, perchance, from the habit of relying for proof of guilt on a single unconfirmed approver, may be noticed in the prevarication and falsehood of a witness.

The trial of O'Brien seems to combine these different elements of peculiarity. No complaint could certainly be made against the Attorney-General Monahan that he yielded to the splendid vice of the national eloquence. So far from indulging in the *purpurei panni* of a rhetorician, he appears to have disdained or despaired of wearing the mantle of Plunket, and to have discarded eloquence altogether. His speech is a dry detail of most interesting facts, unrelieved by style and unadorned by a single grace of elocution. Mr. Whiteside for the defence redeemed the forensic honour of his country, and struck a key-note of national pathos, which must have vibrated through the hearts of his hearers. His wit and humour flashed forth occasionally in cross-examining the adverse witnesses, but under manifest restraint, for he must have felt bowed down and oppressed by the hopelessness of his position, and constrained to take technical objections to the proceedings, which a feeling of chivalrous fidelity to the desperate fortunes of his client alone could justify. The scenes of the forensic drama never pro-

duced a more striking *tableau* than when the two witnesses, Dobbyn and Dalton, confronted and contradicted each other, — the one asserting a series of interviews and conversations, the other denying doggedly that they had ever met. Spy, informer, calculating betrayer, as Dobbyn was, and repulsive to the view, from his appearing to chuckle over his plots and counter-plots, there can be little doubt that he was the witness of truth. Had more tact and skill been evinced on the part of the legal advisers of the Crown, he might have been confirmed in many particulars, especially the handwriting on the different balloting papers; but they left him wholly uncorroborated, except as to the name of the Red Hand Club, and the jury evidently disliked, if they did not wholly disbelieve, his evidence. But the facts of the case were too strong and clear to permit of their wavering into an acquittal.

O'Brien's able counsel took the same line of defence as was adopted on the trial of Frost for high treason, that his insurrectional rising and firing on the troops was for a personal selfish object, not for any general purpose, or with any ulterior view applicable to the Irish nation. This was the narrow ridge, scarcely sufficient for the foot to rest on, the frail, slight, ricketty plank over a yawning abyss, by which alone his counsel could hope to extricate their client; but his own speeches and letters and acts rendered even this method of escape (rather an ignoble one, by the bye,) perfectly hopeless. What patriot can regret his condemnation and punishment? Inferior to O'Connell in the wily arts of a demagogue, especially one of the lower form, not elastic enough, too conscientious and truthful to cajole a mob, he seems to have endeavoured to atone by rash deeds for his inferiority in glowing words, and by directness in conduct, even though branded with rebellion, to compensate for less cunning tactics and defective diplomacy.

A gentleman by birth and bearing, but the victim of a morbid vanity, — sincere both in what he said and did, but deficient in prudence, and temper, and wisdom, — yearning for the glory of sway, but without the vigour to maintain supremacy, — it would appear that he was goaded by personal danger into a species of frenzy, and driven to make a despe-

rate appeal to chance medley, and the toss of the die, even should it be war. Wounded vanity sickens some minds, and maddens others. He must have been blinded by his passions, or he could not have thrown up recklessly the signal rocket that might have scattered confusion, civil war, massacre, anarchy. "Let loose the rabble," exclaimed Plunket, when inveighing against Emmet, "from the salutary restraint of the law, and who can take upon himself to limit their barbarities! Who can say he will disturb the peace of the world, and rule it when wildest! Let loose the winds of heaven, and what power less than the Omnipotent can control them!"

If we may pursue the language of metaphor as best describing the state of Ireland in July, 1848, it can be truly said that the sword hung suspended over a whole people by a single thread; the cloud, charged with thunder, seemed ready to burst at any moment. It required more than mortal power to keep the waters standing, as by a perpetual miracle, on the right hand and on the left, without overflowing. A merciful Providence — turning the hearts of men, and overruling their counsels — could alone have prevented a general deluge engulphing property and life.

Had O'Brien been a firm, resolute Roman Catholic leader, full of moral as well as physical courage, — still more, had the priest stood in firm alliance at his side, — the fires that blazed on the hills in 1798 would have been pale in comparison with the illumination of the year that closed the next half-century; and the loss of life, even though 70,000 are computed to have perished in that miserable rebellion, might have been still more enormous. The commencement of the last sanguinary struggle for perpetual separation was averted, under God, not less by the vast preparations of Government, which had filled the country with troops and artillery, than by the surprise which their striking the first blow, and suspending the Habeas Corpus Act, occasioned, — the apathy of the priests, and inefficiency of the leaders. The people were willing, but not sufficiently organised; and those who should have cheered them on seemed wavering and undetermined. Yet was there sound policy — wisdom and humanity combined — in the decision at which Lord Clarendon arrived, — to spare his life, and that of his fellow traitors. In brooding

over the problem how to break the English yoke in Ireland, he was encouraged by the million shout of Tara. The motive was rather national than selfish, — a delusion shared by myriads of his non-reasoning countrymen, — that the Union was inconsistent with liberty. With a numerical majority of the lower nation as accomplices, and the universal voice of the people petitioning for a reprieve, O'Brien could not be regarded in the light of a common traitor like Despard or Thistlewood, though the consequences of his crime might have been far more fearful than theirs. So complete was the rout — so utter the prostration — that England could afford to be magnanimous. The paradoxical objection, — pretended to be seriously urged by the prisoners, — that the Queen had no power, by the Constitution, to commute their sentence, though founded on the objections of Lord William Russell, in the reign of Charles II., that none of the loathsome penalties which then accompanied the sentence of high treason could be remitted by the Crown, savoured too much of the pretence and style of the heroes of melodrame to be gravely listened to.

Among the many superfluous acts of Parliament which deform and swell the statute book, another was passed to prevent further vexatious delay, declaring the power of Her Majesty to sentence prisoners to be transported instead of being beheaded. The Queen's supremacy was needlessly asserted, but it might be expedient, at the cost of some statutable redundancy, to prevent casuistical doubts and continued agitation. The majesty of the law was vindicated, and the wailing spirit of anarchy effectually laid. Even in Ireland, the traitor "if not dead, sleepeth;" there is an armed truce between the factions, and that troubled land seems once again comparatively at peace.

We need not linger over the preliminary skirmishing by prisoner's counsel; their application to postpone the trial, for non-delivery of lists of jurors and witnesses, as the English act of Anne which made this requisite did not apply to Ireland; and their plea in abatement to the same effect, which was rejected. Neither is it necessary to do

more than notice their challenge to the array, on the ground of unindifference in the sheriff, as the jury panel signed by him consisted in one-eighteenth part only of Catholics. The sheriff, Mr. Pennefather, declared on oath, that he had not struck off any man or left any man on the list on account of his religious persuasion; and the Chief Justice told the gentlemen triers, that the imputation on his conduct was totally destitute of a colour of proof.

The determined counsel for the prisoner claimed to challenge peremptorily thirty-five, according to the common law of England. The 9 Geo. 4, c. 54, s. 9, passed for the purpose of improving the administration of the criminal law of Ireland, enacts, that no person arraigned for treason shall be admitted to any peremptory challenge above the number of twenty. The Court could not but be of opinion that the word "treason" comprised both high and petit treason, and refused to allow the challenge.

In order to prove the prisoner's treasonable intent, the case for the prosecution commenced, not with his warlike acts and counter-marchings, but with the short-hand writers' notes of his speeches on three memorable occasions; one of them made at a most exciting period, that of the French Revolution: another, made at another exciting period, when the Treason-Felony bill was passing: and the third, delivered on the 19th of July, when Dublin was proclaimed. From the first speech it was sought to establish plainly and unambiguously, that in the short interval which had transpired between the beginning of the month of February and the middle of March, a change had come over the political feelings and opinions of Mr. O'Brien, at a time when the minds of men were warped and influenced; and changes in political opinions led many to extremities of which they had not formed the slightest notion previously. Some passages in this voluminous speech showed that O'Brien was prepared to effect the liberation of his country from English yoke by force; and that his only doubt arose from the want of preparation.

"For my own part, although I have seen much during the last two years to make me fancy that the spirit of my countrymen was greatly degenerated (cries of 'So it is,' and

'No'), yet I cannot believe that if a proper summons be given to them, that they are not still willing to vindicate the character that was once the peculiar character of the Irish nation—of unrivalled bravery. Now, for myself, gentlemen, I make no parade of personal courage—I am not conscious of possessing that high virtue; but I do trust—I say it in all humility—that if, by surrendering my life, either upon the scaffold or in the field, I could thereby secure the redemption of this land from the bondage under which it now suffers, that that life should be cheerfully given [*cheers*]. But, gentlemen, though I trust I should not forbear to make that sacrifice, if it were necessary, I do confess to you, at the same time, I have the utmost possible horror of engaging in a fruitless and an unsuccessful rebellion. I have seen in this country—I have read in this country's history so many instances of failure arising—on one occasion from precipitation, on another occasion from division—from a thousand accidents which prudence might have controlled—that I am deeply impressed with the opinion, that no national exertion should ever again be made by this country until success may be considered all but certain."

The rash speaker, far more sincere, and therefore far less guarded than O'Connell, invited the landlords to fraternise, and thus spoke out his meaning. "It is not perhaps unseasonable that I should suggest to them (and these are times in which predictions are sometimes verified), that it will be exceedingly unwise, and exceedingly unsafe, for any of that class to take part against the Irish people. I do not apprehend that my countrymen will resort to butchery and massacre; but I think it exceedingly probable, that if they should be found, in any future collision that should take place of a national kind, to have taken part against the Irish nation, and that the Irish nation should be triumphant in any struggle that may hereafter take place, I think it exceedingly likely that their properties will be carried to the national treasury. I think it right to give this hint to them as a friend."

To prevent a hostile collision with the troops and police, he recommended holding out to them the right hand of fellowship. "I do not believe that the British soldier, as is

sometimes said, divests himself of all sentiments of humanity when he puts on a red coat. I am told that the Scotch soldiers are the part of the army upon which the Government rely chiefly for their operations against the Irish people. Can you and I forget we are children of the Gael? Can you forget that these Scotch soldiers, these Highland regiments, are, in fact, like ourselves, children of the Gael; that they at this moment speak the same language which is spoken throughout a great portion of the south, and west, and north of Ireland; that they are of the same kindred with ourselves? You have been in the habit, many of you, of looking on the police force as a hostile force. I say that sentiment ought to be discharged from your bosoms. The police force are Irishmen, like yourselves. There are ten thousand of them. They are as fine a body of men as ever held a musket; and if their energies were properly directed, they would become the safeguard of this country."

Having resisted Mitchel's resolution for a physical force movement in February, in six weeks the prisoner wholly altered his views, and thus announced the change. "But the circumstances of affairs are totally different now; and under those circumstances—under the altered condition of circumstances—I have no hesitation in saying, that I think it exceedingly desirable that all our intelligent young men, particularly those who have been engaged in surveying, engineering, and similar pursuits, should apply their minds to the best mode of taking strong places, and of defending weak ones. These men will probably form, if they distinguish themselves in this line, a portion of the sappers and miners of the future Irish army."

On his return from a mission to congratulate the French Republic, on the 15th April, he mentioned "the pleasure he had in meeting one whose name carries with it no small portion of respect in this country; *one of those who unfortunately failed in* '98—but who at the age of eighty-five, retains as genuine a feeling of patriotism, as ardent sympathies for this country, as any youth of twenty amongst you —I mean General O'Connor!"

On the 19th July, Government having placed Dublin

under the provisions of the Arms' Act, Mr. O'Brien, at a meeting of the League, unfurled still more plainly the standard of rebellion. "Another of their enactments during the present session has been the Felony Act, as it is called — the Gagging Act — an act which enables the Government to transport beyond the seas men who shall, by advised writing or speaking, endeavour to maintain the rights of their native land; and under that enactment we now see in the dungeons of Dublin, four of the ablest and most virtuous men in this country lying as prisoners, subjected to every indignity which a bad government can inflict. Gentlemen, for these men I claim your sympathy. And now I feel myself again somewhat fettered, and my lips closed as to the advice I ought to give; but I call upon you deeply to consider what ought to be the conduct of the Irish nation with reference to the trial of those men. I trust we shall not allow in this country such scenes to be again enacted, as those which took place during the trial of Mr. Mitchel. I trust there will be an unanimous determination throughout this land that these men shall not be subjected to the same jugglery of injustice; and that men who have been, after all, but exponents of the sentiments which every man amongst you feels — who have done nothing but that which every patriot and virtuous man ought to do for his country — that if these men shall fall, the Irish nation is prepared to suffer with them. This will be a very important consideration in every public assemblage which will be held in Ireland during the next three weeks. I will not venture to anticipate what will be the result of that decision; but I invite my countrymen to consider what is the line of conduct that befits them as men struggling to be free, as men who have a generous spirit in their bosoms. I am, however, bound to say to the Government, that this is an occasion upon which a solemn warning will not be misplaced; and I speak my own individual opinion when I tell them, that it is my firm belief that if those men should be transported, or if an attempt should be made to transport those men, that the funds, within one week after such transportation, will be twenty per cent. below their present price. For my part I confess, though I am of a peaceable

disposition, that I should not have been a party to the formation of this League, if I felt myself in any degree whatsoever fettered in regard to any ultimate contingencies that may arise in vindicating the honour and the rights of this country. But I am contented to act in the League with those men who are desirous to try every experiment that can be made of another character."

These speeches indicated an intention to take some decisive measures for the attainment of the object the prisoner had in view. To show that he contemplated an immediate rising, some documents were then read which had been found in a large leathern portmanteau. His arrest at the railway station at Thurles, on the 6th August, was proved; and General Macdonald spoke to his money and keys being delivered to him; they were transmitted to the Castle, and locked in a drawer there. The prisoner applied to Mr. Jones, a stipendiary magistrate, for his portmanteau, stating it was in the possession of Mrs. Doheny at Cashel. It was found locked, not at Doheny's, but carried thence and thrown with some other property of his into a lime-kiln. This trunk was forwarded to the Castle, where the keys sent by General Macdonald, unlocked it, and, amongst deeds and documents relating to private matters, was found the following startling letter from Mr. Duffy. As the lock had not been picked, there seemed sufficient presumptive evidence that the papers were there when O'Brien left it, and that the contents were sufficiently traced to his possession to be adduced in evidence against him.

"Saturday.

"My dear Sir,—I am glad to learn that you are about to commence a series of meetings in Munster. There is no half-way house for you. You will be the head of the movement, loyally obeyed, and the revolution will be conducted with order and clemency; or the mere anarchists will prevail with the people, and our revolution will be a bloody chaos. You have, at present, La Fayette's place, so graphically painted by Lamartine; and, I believe, have fallen into La Fayette's error,—that of not using it to all its extent and in all its resources. I am perfectly well aware that you don't desire to lead or influence others; but I believe, with Lamartine, that that feeling, which is a high personal and

civic virtue, is a vice in revolutions. One might as well, I think, not want to influence a man who was going to walk on thawing ice, or to cross a fordless river, as not to desire to keep men right in a political struggle, and to do it with might and main. If I were Smith O'Brien, I would strike out in my own mind, or with such counsel as I valued, a definite course for the revolution, and labour incessantly to develope it in that way. For example, your project of obtaining signatures to the roll of the National Guard — and when a sufficient number were produced, and not sooner, calling the Council of Three Hundred — was one I entirely relied upon; but it has been permitted to fall into disuse, and would be scarcely revived now. I verily believe the hopes of the country depend upon the manner in which the next two months are used. There is not a town in which you could not find a band of missionaries to organise the neighbouring counties. Every club has its active men fit for this work; and it is only by applying all our force to it that we will succeed."

The magistrate, Mr. Jones, did not appear to have acted in the most straightforward manner in forwarding the portmanteau that contained this and other important documents to the Castle, without apprising O'Brien; but, as he was in custody on a charge of notorious treason, there might be less reason for ceremony, and in dispensing extreme courtesy, the justice might have failed to secure important evidence. Mr. Whiteside thus sharply cross-examined the gentleman:—

"You are a stipendiary magistrate?—I am.

You always keep your word?—I do.

Mr. O'Brien was your prisoner at this time?—Yes; he was a prisoner in the bridewell.

And when he said he wished to have his portmanteau, you undertook to get it for him?—I did.

Did you tell him you would prove on the trial against him any thing he said to you while in your custody if he was prosecuted?—No; I did not.

Did you, instead of sending that portmanteau to him as you promised, pack it up and send it to the Under Secretary of State in Dublin?—I sent it through the channel, I conceived, I ought to send it to him.

Did you tell Mr. O'Brien, when you said you would get his portmanteau with pleasure, the way you would get it

would be to pack it up and send it to the Under Secretary of State?—No.

Did you tell him that you would put it into the hands of the police, and have the papers examined?—I did not know what was in it.

And you sent it up to the Under Secretary the next morning?—I did.

Did you give a distinct engagement that Mr. O'Brien should receive his portmanteau, accompanying your assurance with every demonstration of courtesy; and on the faith of that assurance did you get from him a letter?—Yes.

And you sent the letter by the police?—I did.

Mr. Whiteside. And you kept your word. You may go down."

The Crown counsel, having prepared the minds of the jury by the speeches he had delivered, and the writings constructively traced to his possession, that O'Brien was ripe for mutiny, proceeded too prove acts of treason by the evidence of a spy, James Stephenson Dobbyn,—a man of dogged bearing and ill-favoured countenance,—who took the prisoner and his advisers entirely by surprise, and, under a heavy exterior, evinced remarkable cunning and self-possession. The transactions that he spoke to were immediately before the rising, and rife with treason. He declared that he was a member of the Red Hand Club, which met at Constitution Hill, in Dublin, and attended three meetings. "The club-house was marked with a red hand on the blinds of the windows. There were thirty members of the Red Hand Club; and in July the members of the Curran Club had increased to five hundred. Mr. Meagher and Mr. Dillon were members. On the 15th of July he had been at a meeting of the Red Hand Club; and the council of the Confederates held a meeting in D'Olier Street, and he went there that evening about nine o'clock. He went to attend a meeting of the council, and he saw Mr. O'Brien there. He was at the head of the table, and Mr. Halpin was sitting at the foot; one hundred persons and more were assembled. Mr. O'Brien had a book in his hand, from which he called out the names

Queen. The strength of Mr. Whiteside's cross-examination was therefore earnestly directed to break down his testimony, — to lure him into contradictions, and disentitle the informer to all credit with the jury. The effort was skilfully made, and ably repulsed, as the following extracts from the most salient parts of his cross-examination will fully prove. At the close of the direct examination they had both shown a determination for the fray.

Chief Justice. We shall now adjourn for a quarter of an hour. In the meantime let the witness remain here, so that there be no sort of communication with him.

Mr. Whiteside. I must request this witness to remain on the table.

Chief Justice. Let the Sub-sheriff take charge of the witness.

Witness. It is very hard to be exhibited here as a public spectacle.

Chief Justice. Mr. Sub-sheriff, keep him in view, so as to let no one communicate with him.

[*The witness was then accommodated with a seat by the Sub-sheriff.*

Their lordships then retired; and on their return the witness was directed to go on the table again.]

Cross-examined by Mr. Whiteside. Do you take an interest in political matters? — I think I do.

Your voice has become a little delicate; you take an interest in political matters in this country? — Not much.

A little, I think; a slight interest? — No.

You take no interest whatever? — Not the least.

You are quite unaffected and unconnected with the whole of the political movements in Ireland? — Quite; they went in to plot, and I went in to counter-plot.

How long, Mr. Dobbyn, have you been a member of the club of which you have spoken — the Red Hand Club? — The Red Hand Club?

How long were you a member of that body? — From about the 16th of June.

Did you speak in that club? — No.

Did you vote in it? — There was no voting in it.

Did you draw on your memory, or your imagination, for the name of your club? — It was not I who gave the name to it.

Did such a club, on your oath, exist at all as the Red Hand Club? — On my oath it did exist.

"The Red Hand Club" by name? Is there any living man here but yourself to prove that such a club existed at all? — On my oath I don't know.

You have stated that, on the night of the 15th of July, you went to the council of the Confederation: were you a member of the council? — I was elected a member of the council by that club, to represent that club.

Are you acquainted with Mr. O'Brien? — I have seen him.

Did you ever speak to him in your life? — I don't know; I might.

The Prisoner. Look round, sir.

Mr. Whiteside. Will you swear you ever did; will you swear you ever did speak to that gentleman in your life? — I don't say I have spoken to him, but I have heard him speaking.

Did I ask you that? Did you speak to him? — I don't think I did speak to him.

You must answer positively. — I did not then.

The clubbists were to go yachting about the bay, plotting and getting up an insurrection? — Yes, I swear positively that that was it.

I suppose you would have had a yacht in your club too, if you had got it gratuitously? — Yes.

The Prisoner. I beg pardon for one moment, my lord. I am not familiar with the proceedings of courts of law; but it seems to me, that as you have recorded every thing that is unfavourable to me in your lordship's notes, that you ought also to take down those remarks made by the witness which are favourable.

Chief Justice. How do you know that I have not taken them down?

The Prisoner. I have observed your lordship.

Chief Justice. You had better not interfere.

of the clubs, and their representatives; and as he called out, each of the persons was asked the numerical strength of the club, and reported its strength. Mr. O'Brien asked each representative of a club whether his club was organised; whether it was divided into sections and sub-sections, and officered. Three hours were occupied in this process. Mr. O'Brien, during that evening, stated to the effect, that the object of their organisation was to effect the independence of their country. Mr. Troughton gave an account of an organisation by him in England; and he said that there were two towns in which there were five hundred armed men ready to come over when the insurrection should break out; that they had two swivels ready to come over. Troughton said there was a difficulty in getting the swivels over. Mr. O'Brien then said that he had been to Bantry, and he had met a boat's crew who had facilitated his meeting, so that he had been able to meet about five thousand at once; and he said that each of the clubs in Dublin should have a boat to answer that or any other purpose. Duffy was at this time in prison. Mr. O'Brien spoke for a considerable time on the organisation necessary to effect the object they had in view, and said that it was not then sufficiently perfect; at least, he had not inspected Ireland so as to have proof positive. As to the date of the insurrection, he stated that he would ascend the gallows rather than any one should lose his life on his account by a premature movement. There was a conversation about the rescue of those in gaol; and all cried out that if they were convicted they would rescue them. Mr. O'Brien's reply, with respect to the premature breaking out, was as well with respect to the insurrection as to the rescue. Then he went on, and stated another meeting on the 19th of July, the day after the proclamation under the act, by which all persons were prohibited from having arms except licensed. There was on that day, in the middle of the day, a meeting of the representatives of clubs and of the council of the Confederation. The meeting was greatly crowded. Mr. O'Brien was there. The object of the meeting was to defeat the proclamation. Brennan proposed an immediate insurrection, and said that the people would not

be in a better position in harvest time, and would be dispirited by delay, while the Government would take up all the arms which they could. Dillon moved an amendment, that the people should conceal their arms, and should give passive resistance to the execution of the proclamation. Mr. O'Brien said a break-out at that time would be premature. Brennan said, you will halt between two opinions: if you wait to depend on American or French assistance, you might as well wait till rifles are forged in heaven, and angels draw the triggers: you have the elements of success in yourselves. They proceeded to elect an executive council; and at first, some were for seven members, and some were for three, and some were for five. The former council of the Confederation had been constituted of twenty-one. Each of these suggestions—for three, five, and seven—were put to the vote, and ultimately it was agreed that five should be the number. Then there was to be a ballot, and each of the persons present put a slip of paper, with five names upon it, into a hat; and many wanted to elect Mr. O'Brien, but Dillon objected to his election, as he could do more good organising in the country than working with them. Twenty-nine or thirty balloted, and he himself. Each wrote the names of the five he voted for. The balloting papers were removed by two scrutineers into the next room; and they returned, and declared the result of the ballot: Dillon, Meagher, O'Gorman, and M'Gee—Lalor and Devin Reilly had equal votes, and, on a second ballot, Devin Reilly was elected. Then occurred a very important transaction:—Lalor and M'Dermot proposed that each of the persons elected should give a pledge to have the insurrection, at the latest, by the 8th of August; they said that the prisoners were in gaol, and must be liberated; on which Meagher said he would not take the pledge, but would do all in his heart and soul to hasten the insurrection, even before the 8th of August; Dillon said, so help him God, he would do so also; and M'Gee said he would, by speaking, writing, and action, hasten the insurrection."

This statement of Dobbyn, if it was believed, disclosed a scene of plain, downright treason to make war upon the

Is not Mr. O'Brien's name struck out? It was, because he would not be elected? — Yes, by the scrutineers.

Do not give me a ghost, but tell me a living man, a member of that club, called the Red Head, or Red Hand Club, who was the president, describe him by name? — There was no president.

Who is the secretary? — He was a man of the name of O'Callaghan.

Where is he? — I believe he has gone to America.

He is out of this, at all events? — He is.

Anybody else? — No. I don't think it prudent to give you the names of other persons.

We are not allowed to know the names of our brother conspirators? — I don't think you ought.

Now, Mr. Dobbyn, may I take the liberty of asking you what you are by profession? — A Protestant.

You know you told a falsehood in going into the club — you said they went to plot, and you went to counter plot, and arrayed yourself under false colours. Is not that so? — I don't care ——

Gained information; you have done all that? — And defeated their aim.

You have not hanged all your men yet; you are to be believed by a jury first. Did you swear an information? — Never."

It was just possible, notwithstanding the agreement, so profound a respect had the committee for the priests, and so anxious did each feel to enlist their services, that they might introduce the name, with four others, as a token of homage, without any real idea of electing a member of the church militant. The witness escaped from this passage of arms without any fatal wound, and the Solicitor-General let him drop quietly. His cross-examination thus concluded: —

"Have you ever had communication with Halpin, the secretary, since? — No. The last time I saw him was at that meeting of the 21st, as they all fled the next day.

You have said that already. Would you like to say it again. You have said it twice? — No.

Which I dare say was a great consolation to your 'hereditary loyalty.' You may go down.

The Solicitor-General. You may go down, Dobbyn. I have nothing to ask you."

The discovery of the balloting papers at Lalor's was then proved, and the departure of O'Brien for Dublin in a traveling car on the evening of July 22nd. His subsequent uneasy fitful wanderings through the country, — addresses to the populace and policemen to be prepared for any emergency, and to hurrah for a republic, were next spoken to by various members of the constabulary force, the people themselves being too strongly disaffected to be compelled to give evidence. Some witnesses positively refused to be sworn at all, and others when required to identify the prisoner either swore falsely that they did not recognise, or pretended not to see him, studiously directing their gaze elsewhere. When John O'Donnell, a respectable-looking farmer, was called on the table, on the book being tendered to him he said, " What is that? I am not inclined to take the book at all. I will not, under any circumstances. Bring me out, with a file of soldiers, and put a pile of bullets in me, but I will never swear."

The Attorney-General. I must apply to your lordships to order this man to be sworn. If he will not take the oath he must be committed.

Chief Justice. You have refused to be sworn.

O'Donnell. My brother is concerned in this case; and I could never go home with the infamy of an informer on my brow. I do not care.

Chief Justice. Then you must stand committed.

The Attorney-General. It is right I should inform him that I am not going to examine him as far as his brother is concerned. It is with respect to this case.

O'Donnell. I will not do it directly or indirectly, so let the law take its course.

Chief Justice. Then you stand committed.

[*O'Donnel was removed in custody.*]

His example was imitated by Richard Shea, who positively refused to give evidence against so respectable a gentleman.

Mr. Whiteside. I have got a record of it, to which I can refer, if necessary: dates are important.

Chief Justice. Mr. Whiteside, I have been attending to every word; and I can assure you that I have taken down every thing that is in favour of the prisoner.

Mr. Whiteside. I am quite satisfied of that, my lord, and feel much obliged to your lordship."

After this somewhat impertinent interruption, (an air of self-sufficiency and arrogance marked the demeanour of the prisoner throughout his trial,) Mr. Whiteside resumed his dexterous but well-foiled attempts to baffle and confound the witness. Having stated that he received information of the last meeting going on, he was asked—

"Who told you that that meeting was going on?—A person whom I will not tell you.

You must.—I won't.

I tell you, sir, you shall answer me. Who told you that the meeting was going on?—Not that day.

Who told you the meeting was going on? Who told you? Who was the person who sent you there?—There was no person sent me there.

Who told you that the meeting was going on?—I tell you I will not tell you. Do you think I will give up a man to be assassinated by the clubs of Dublin for your pleasure?

I insist on an answer. I insist on your telling me who sent you that day to that meeting?—I put myself under the protection of the Court.

Who was that person?—I tell you there are certain names that I am not going to give you; and the reason is, that they would be held up to assassination by the clubs of Dublin; and on my oath—I now put myself under the protection of the Court—I know they would, because I have been listening to them plotting and concocting assassination.

See, Mr. Dobbyn, you are not going to escape in that way—by that flourish?—I am not making any flourish."

On appeal to the Court they decided, after argument, that according to the principle of convenience to public justice, they would not compel the witness to answer the question.

Mr. Whiteside resumed: "Is that person in any employ-

ment in Dublin? — He is a gentleman of rank and respectability, and of hereditary loyalty.

Of what? — Of hereditary loyalty to the Crown.

Of 'hereditary loyalty?' — Yes.

He is so respectable a gentleman that you decline to mention his name in a court of justice? — Yes, for the reason I have stated."

The answer gave the true solution, and proved his quickness and presence of mind.

The voting papers, on being examined, showed that nine votes had been given for a Roman Catholic priest, the Rev. J. Kenyon, and one for the Rev. Father O'Malley. The witness said that the persons present unanimously opposed electing a priest, as it was a council of war.

Mr. Whiteside thought that he had at length caught the witness at a disadvantage, and exclaimed, showering the papers upon him —

"There is the Rev. Father Kenyon — there he is again! There he is again, at the bottom of that [*handing another to the witness*]; and here he is again [*handing another*]. I think he was elected, after all. How many have you there? — Seven.

Will you persevere in the answer you before gave me, that it was unanimously determined not to vote for a priest; will you swear that again? — I give you ——

I ask you a plain question; give me an answer, 'yes' or 'no.' With those votes before you in writing, do you tell the jury that it was resolved on not to vote for a priest? — It was said, without going to a division, that a priest would not be voted on it.

Do you know Mr. Kenyon? — I do.

Where is he now? — I don't know.

Is he not in his parish? — I don't know.

Is he not walking about in his parish? — I cannot say.

Is he not at this moment at large in his parish? — He may be.

And Mr. O'Brien is in the dock, who was not voted for at that meeting by a single man? — His name does appear.

Struck out, is it not? What a cautious informer you are!

They were both committed to prison for the contempt, and remained there some months, it being naturally thought that the ends of justice would be defeated unless some examples were made. Others, when asked if they remembered O'Brien, said they had no perfect recollection, and being pressed to answer whether they did not see him in the dock, looked point blank, *irretortis oculis*, at the gaoler, and would not see him. But all the efforts at concealment of misguided partizans could not disguise the many conclusive facts told by unimpeachable witnesses, which proved beyond doubt or controversy his open resistance to the law; and the only effectual struggle that his counsel could make on his behalf was in reference to the intent, whether he regarded alone and singly his escape from arrest, or was attempting a general resistance, —that when the wisp of straw was lighted on the hills there might be a general conflagration. His proceedings from the Monday, July 24, to Saturday, July 29, were clearly traced by a number of witnesses, who described with great minuteness the journeyings of Mr. O'Brien and his companions, to and from Ballingarry. "Some of the people, about thirty, were armed with guns, and pistols, and blunderbusses; the others had pikes and pitchforks. Mr. O'Brien was drilling them. Barricades were erected at a place called 'the Pike.' The chapel bells were rung, and a great number of people rushed down in the direction of the Pike. They had scythes on poles, guns, pikes, and pitchforks. They brought empty carts, and cars full of turf with them, and erected them into barricades; they also used some large pieces of timber for the same purpose."

Captain Longmore, of the 8th Hussars, proved meeting with the barricades. "He rode up and told the person he saw that, unless the barricades were immediately removed, he should feel it his duty to fire. A man, rather tall and sallow, respectably dressed, but without arms, came forward from the barricades, and said he understood the troop was merely passing through the town, but that the people were determined to resist the arrest of Smith O'Brien, who was then in the town. He asked witness if he had a warrant to arrest him? To which the witness replied, 'No.' Nothing further

was said, and the barricades were ordered to be removed, and the troops passed through."

David Williams, a head constable, stationed with six men at Mullinahone, gave important evidence of O'Brien's speech and visit to his barrack. "On Tuesday evening the chapel-bell was rung, and the people were gathering. He heard him speak from a wall, addressing the people, then in number about two hundred. He had a pistol in his left breast. Heard Mr. O'Brien say that a warrant was issued for his arrest, and if taken he thought he should be hanged; and he was anxious to ascertain whether it was their wish he should surrender himself. If not, that he was prepared to resist any attempt that was made to arrest him. He said something about there being another form of government in less than six weeks, and followed up that expression by saying that all vacancies should be filled by Irishmen. A gentleman whose name I heard was Dillon was with him. The numbers increased that night; saw-pikes and pitchforks in the hands of some, others had fire-arms, others sticks. There were about 2,000 persons. Witness was then in the barrack, and remained up all night with his party. Remembered the morning of the 26th. Saw Mr. O'Brien that morning about eight o'clock. Witness and his party were then in their barrack. Mr. O'Brien went to the barrack; the door was open: their arms were up-stairs. Mr. O'Brien was dressed in a dark body-coat, and with a cap like a military officer's cap, with a gold band on it. He had a stick with a spear on it in his left hand, and in the other he had a pistol; he also had three pistols in the breast of his coat. Witness observed them in speaking to him. He was accompanied by two persons; one was a young man about 23 years of age, and he had a double-barrelled gun and a dirk. The other was older and had a gun; his name was O'Donoghue. When Mr. O'Brien came into the barrack he said he wanted their arms. Witness said he could not comply with his request; that they could only part with their arms with their lives. He asked witness if he did not see the display on the last night? Witness said he did. Mr. O'Brien said, that a barrack where there were 500 men was to be attacked that day,

and said, it was better for witness and his party to give up their arms, and go to Callan, and he would place them in pay. Could not say whether he spoke in the singular or plural number. After that expression he asked what witness intended to do; and witness said, he should be unworthy of the name of an Irishman if he gave him the arms. Mr. O'Brien said he would give them an hour to consider, and in that time he would have 500 men, and that resistance would be useless. Mr. O'Brien and the other two then left the barrack. About five or six minutes after that witness and his party marched out of their barracks with their arms, and went to Cashel pursuant to orders."

During that eventful night there were signal fires lighted at Slievenamon and other places, ten or twenty in number.

Overwhelmed with the pressure of the evidence, the counsel for the prisoner gave way to little starts of temper, and drew down occasional animadversion by his excessive excitability. But what counsel ever placed in that most trying position, the defending, almost hopelessly, a prisoner for his life, would not readily excuse him?

The following little outbreak will remind the reader of Erskine's volatility in his defence of Hardy and Horne Tooke: —

"You represent that Mr. O'Brien had three pistols? — Four; one in his hand, and three in the breast-pocket of his coat.

He had not one in his mouth? — No."

Again, when the Attorney-General was pressing a reluctant witness, who would not identify the prisoner and his party —

"Of course you took very good care to be engaged in the shop all day?

Mr. Whiteside. I submit, my lord, that this is not the mode to examine a witness on the direct. You may not scold him, or do what you please with him.

The Attorney-General. I do not want to scold him.

Mr. Whiteside. Oh! you may go on just as you please.

The Attorney-General. I think I may."

One of the soldiers, William Parsons, having added to his written information, the sworn statement that the men said

they would kill all the bloody soldiers, Mr. Whiteside pressed him keenly, and incurred a severe rebuke.

"You said nothing about 'killing the bloody soldiers,' or 'blowing out your brains?' — No.

And you now swear they said they would kill all the bloody soldiers? — Yes.

And you knew that at the time you swore your information? — Yes.

And a man told you to stop, or he would blow your brains out?— Yes.

You may go down; you are a credit to the army.—What did you say?

Mr. Whiteside. You are a credit to the army.

The Solicitor-General. He is a very great credit to the army. I think that is a very unjustifiable observation for counsel to make.

Mr. Whiteside. Is your captain here? — I think he is.

The captain who had the conversation at the barricade? — Yes.

The Solicitor-General. Yes, he is going to be called; he was merely brought to prove the identity.

Chief Justice Doherty. These observations ought not to be made, Mr. Whiteside; they are quite irregular.

Chief Justice. I hope you see the impropriety of that observation.

Mr. Whiteside. When a man undertakes to swear an information, he ought to swear the whole truth. I certainly have seen judges observe on the point blank contradiction between a man's information and his evidence.

Chief Justice Doherty. There is no contradiction — nothing approaching a contradiction."

The forcible-feeble conduct of O'Brien, playing the part of He would and He would not be a traitor in the wilds of Tipperary, was further described; the last act of desperation being the worst.

"About twelve o'clock, on Saturday, he walked into the yard at the mining concerns; he asked who was in charge of the concerns. Witness said that he was; and Mr. O'Brien said that he came for some carts and horses that were in a yard. A small boy was walking behind him. He said he

wanted the carts and boxes to throw up barricades across the road. Witness said he could not give them up; on which Mr. O'Brien said he would take them by force, and ordered a man named Tobin, who was standing by, to wheel away the carts, but he refused; Mr. O'Brien himself then commenced wheeling the cart, but he moved it only a few yards. No others came into the concerns, but about 500 persons were within fifty yards of it. Mr. O'Brien and the people commenced and completed the erection of a barricade on the road to Ballingarry. It consisted of ladders, boxes, sticks, and stones, and was about four feet high. The people, when they had finished it, walked up and down the road. They were armed with pikes and guns. Mr. O'Brien had a pistol in his hand. They continued walking about for an hour."

In answer to questions by Mr. Whiteside, he said that the men under his charge were anxious to protect Mr. O'Brien from arrest. The mining property was not injured. There was about fifty pounds of powder at the concerns that day, but no attempt was made to take it. It was left untouched. One hundred pounds in money was also remitted that morning from the mines. But all this show of quiet, every-day business, could not alter the nature of the menacing letter which O'Brien had been unadvised enough to write, and which was then proved and read.

"Mr. William Smith O'Brien presents his compliments to the Directors of the Mining Company, and feeling it incumbent upon him to do all in his power to prevent the inhabitants of the collieries from suffering inconvenience, in consequence of the noble and courageous protection afforded by them to him, takes the liberty of offering the following suggestions:—He recommends *that for the present* the whole of the proceeds arising weekly from the sale of coal and culm be applied in payment of men employed *by contract* in raising coal and culm.

"He recommends that a brisk demand be encouraged by lowering the price of coal and culm to the public.

"In case he should find that the Mining Company endeavours to distress the people by withholding wages and other means, Mr. O'Brien will instruct the colliers to occupy and work the mines on their own account; and in case the Irish revolution should

succeed, the property of the Mining Company will be confiscated as national property.

"On the contrary, if the Mining Company observes a strict and honourable neutrality, doing their utmost to give support to the population of this district during their present time of difficulty and trial, that then their property shall be protected to the utmost extent of Mr. O'Brien's power."

The crowning act of his madness when playing at rebellion —the attack on Widow M'Cormack's house, at Farinory, —was then told with much effect by Thomas Trant, who made his appearance on the table in police uniform. He was a grey-haired elderly man, with a bold, determined bearing; and his evidence, which was given with rapidity and clearness, was listened to with the most marked attention by the bar and audience. He said: "I am sub-inspector of police for the county Kilkenny. Last July I was stationed at the town of Callan. I remember proceeding on the 29th of that month to Ballingarry. I left Callan on Saturday, July 29, between nine and ten o'clock, and arrived near to Ballingarry some time close to one o'clock. The party under my command consisted of forty-six men. After I had passed through the village of Ballingarry I observed great crowds of people following me along the road, and going along the fields on the left of my party. When I had advanced about two miles beyond Ballingarry, towards the Commons, I observed great crowds in my front coming down from all the hills, and heard shrill whistling among them. When I saw the crowds I immediately wheeled my party up a road towards my right. We ascended the hill nearly a mile. The people behind us from Ballingarry took the country on the right; those who had been going in the fields parallel to us took to our rear; and those on the Commons closed in on our left, so that we were almost surrounded. I perceived that several of the people had pikes and guns. It would be impossible to count those who had guns and pikes on the trail, but wherever my eye rested I perceived people with them. About this time I observed a slated house in advance; and on seeing it I ordered my men, who had been marching in columns of four, to break, and take possession of it, and if

refused admission to march into it. My men ran for the house, and I followed them. The crowd were then behind, at each side of us, and following in our rear. Most of them were running as my men advanced; and in two or three minutes more they would have cut us off from the house. I directed the men to turn all the things they could get against the windows, and to secure the doors. While in the act of securing the house it was surrounded by the people. I was proceeding up-stairs, in order to see what arrangement they were making to strengthen the upper rooms, when I heard a voice from the rear call for the officer. I went to the lobby-window to the man who wanted me. He was unarmed. He put up his hands and said to me, 'For God's sake, let there be no firing! We want to make peace.' I replied, 'If the people do not fire we shall not fire; but if a shot is fired from the outside we shall fire as long as a cartridge or a man remains.' Nothing further was said by the man outside. The voice to which I allude said, 'Tell Mr. Trant Mr. O'Brien is here!' It was called to me by one of my own party. I came down and went to the window, when I was informed Mr. O'Brien had been, but he had disappeared. I went back up-stairs again, and was again called to, that Mr. O'Brien was there, and wished to see me. I replied, 'If so, let him come round to the window.' He would not do so. Immediately after that I heard a crash of stones and shots from without; the window was smashed. I instantly gave the order to fire, and the firing commenced. It continued about an hour from the first time the first shot was fired. The firing was going on for a considerable time. I should say, that upon coming up to the house they were about 65 to 1, or about 3,000. Wherever my eye rested I saw armed men approaching the house, but I could not form any opinion as to the quantity.

Chief Justice Doherty. Can you form any estimate of the number of shots fired outside?—I could not. I heard shots outside all through.

Mr. Whiteside endeavoured, but with very partial success, to turn the conduct of this resolute police officer into contempt and ridicule. The laughter would have been increased

had a fact which came out on a subsequent trial been elicited. As he was marching with his party from Callan to Ballingarry, they called upon him to whistle or sing some martial air to cheer them on their way, and he began to whistle accordingly. When they reached the house and the conflict was at its height, "thinking," said the witness, that singing was as good for fighting as for marching, I called upon Constable Young to strike up "the British Grenadiers;" he did so, and it was immediately taken up and chorussed throughout the house. But even in this eccentric course, Mr. Trant showed his judgment and good sense to keep up the hearts of the men by song, "*Martemque accendere cantu.*"

"On this occasion, in justice to yourself, you have not underrated any of your services on that day, or the numbers of persons whom you saw?—Not willingly; in the number I have laid down I have heard disinterested persons agree.

During all that firing of so many hundred shots, was there so much as a scrape on the fingers of any of the police; were any of them injured?—Not one; I took care they should not be.

I have the highest respect for your abilities; but you were not wounded?—No.

And you live to-day to tell the dangers that you passed through?—Yes.

Had you any children in the house?—Yes; they were very good hostages; there were five.

Where did you put them?—They were in the corner of a bed.

Where were you yourself?—I was in a room on the left flank; I was in the room where the bed was.

Was there a bed in that room?—There was; and the children were there.

Were you in the bed?—No.

I am asking you a serious question. Will you swear that you did not lie down?—I will.

Did you sit down?—Not at all.

Did you take up a bed at all?—No; I took up a carbine.

Was there any window in the room you were in?—To the left flank; it was the nearest point to the Commons.

Is there any mark of a shot on the outside of the house?—I never examined it.

Did you not look, after the victory was won, to see whether there was the mark of a single shot on the outside of that honse?—I did not; I have answered you several times.

What room were you in in front?—The left flank, next the Commons.

That is the second story?—The second story.

It would not be perfectly easy to kill you there?—Perfectly easy, if they could do it.

Ordinarily, will a musket bullet penetrate a stone wall?—Certainly not.

In the room in which you were before the firing began, were there any stones thrown into that room?—I could not say yes or no. My men in that room tell me I was struck on the breast with a stone, but I do not remember it; my mind was too busily occupied in making arrangements.

Well, if you never get a severer wound than that, you will be covered with glory very easily. Who told you that?—My own men.

They told you, 'Captain, you are wounded, though you do not know it.' Did you get the stone?—No.

Did you look for it?—No.

Perhaps you have the stone?—No.

By-the-by, Mr. Trant, what did you do with the balls that were fired about the house?—Indeed I did not look for them, or think about any of them.

Did you not bring them home with you?—I did not.

Did you find any?—I don't remember looking for one.

On your oath, did you find one?—I made no examination of the front of the house; I told you a dozen times I did not examine the front of the house.

Did you find a ball?—I did not examine it to find it.

Did you find a ball?—I did not find it sure, if I did not look for it."

One of the police, John Moran, was then examined as to a remarkable phrase which he erroneously attributed to O'Brien, who came to the window, and said, "We are all Irishmen, boys; I am Smith O'Brien, and as good a soldier as

any of you." He then demanded our arms. Witness was one of the men who said they would part with their lives before they gave up their arms. He seemed disappointed. He got off the window-sill, and witness heard him say, "Slash away, boys, and slaughter the whole of them."

The prisoner here exclaimed with abrupt vehemence,—Don't you know that you are swearing falsely when you swear that, sir?

Witness (turning round). No. I do not, sir.

Examination continued.—How far was the prisoner from you when he said that?

Mr. O'Brien. Turn round and let me see your face when you are swearing that?

The Attorney-General (to the witness). Do not stir; sit down in your place.

Cross-examined. When Mr. O'Brien came to the window he dashed in the shutter, so that he was fully exposed; and if either party had fired at the time, he must have been shot dead. He spoke civilly to the men. Mr. O'Brien stood with one foot on the window-sill at the time. Witness's bayonet was within six inches of O'Brien's heart. At that time would have shot a man six inches from him, even if unarmed.

Mr. Whiteside. Why did you not shoot him?

Witness. Because I could not; because I did not hear him making use—[*witness stopped and hesitated.*]

Mr. Whiteside.—Oh! you were about saying you did not hear the words Mr. O'Brien used?

Witness became embarrassed, rubbed his head, and after a pause said, "No, I was not about saying so."

Constable Patrick Ford heard the words, "Slash away, boys; we will soon have them all;" but could not say who said them.

Head-constable M'Donough heard the words, "Slash away boys, and slaughter the whole of them."

The corroborative statement of constable Hanover, who produced a bullet, was sought to be weakened by a laugh.

"Now, did not the bullet, from its appearance, look as if it

was fired at the police? [*A laugh.*]—I don't know; but if a policeman was in the room it was fired at, I should think so!"

Constable Carrol spoke to a singular conversation with the prisoner on his retreat. "Mr. O'Brien asked him if he were a mounted policeman, and he said he was. He was in plain clothes. Another person then came up, and said he might consider himself a prisoner, but need not be apprehensive of any harm; that person was armed, and had a belt. A third person afterwards came up, and said the witness was a spy. There was a great sensation on the road. Witness thought he was going to be shot, and he then got from his horse. Mr. M'Manus, the gentleman who arrested him, took him by the arm and brought him by the field out of the crowd. Mr. O'Brien got on the horse, and went away for about half-an-hour. Saw Mr. O'Brien while he was in the crowd. Heard him ask the people, should he give himself up to be hanged? The people told him not. He then said he would take the house in which Mr. Trant was in an hour.

"After he went some way he met Mr. O'Brien. When witness met him, he pulled out a pistol and said, 'Your life for mine; are you come to arrest me?' Witness replied that he was not; that he had no arms; and that he might shoot him if he liked. Mr. O'Brien on that said such an act would be beneath him, and that he would not fire on an unprotected man. He then said witness should go back along the road with him. Witness returned accordingly. Mr. O'Brien had a stick in his hand, and a pistol in his breast. When first he saw him he wore a hat; next time he had a cloth cap, with a gold band and peak. Witness asked leave to speak to him as one man might to another; and, on his telling him to do so, witness told him that it would be impossible for him to carry out what he had undertaken, particularly as the Roman Catholic clergy were against him, as he had seen that day. Asked him how he could expect to succeed. Said the troops would be brought against him, against whom it would be impossible for him to contend. Mr. O'Brien said, that for twenty years he had worked for his country, and that she could redeem herself if she liked.

Witness said that could not be done without blood. Mr. O'Brien replied he wanted no blood. Immediately afterwards Mr. O'Brien gave witness his horse."

He then quietly wended his way to the railway station, as if to give himself up to arrest. With these strong facts and the reading of the documentary evidence before given or extracted, the case for the prosecution closed. On the following day (4th October, 1848), the tenth day of the trial, Mr. Whiteside began, but did not finish, his magnificent defence, completing the pathetic peroration at noon on the following day.

He commenced his impressive address with an allusion to the solemn responsibility that devolved both on them and himself, and a graceful apology for having objected to the jury panel, "as Mr. Smith O'Brien did not wish, in his awful situation, to contradict the opinions of his life. It never entered into my mind to cast an imputation on the respectable gentleman, the sheriff of your county. He bears a name that I respect, for I have been long accustomed to be taught by the wisdom and the learning of that distinguished judge; and he is one who, when (I trust it will be at a very distant day) he may be taken from the evil to come, will long be honoured and revered by his countrymen.

"Gentlemen, when I say I have no complaint to make of the jury, I have a complaint to make of the law. Do not suppose that their lordships in overruling, as they have been so frequently compelled to do, my suggestions on the part of the prisoner, did it from any other reason than that they were coerced to do so by the law. They have no power to make, but they are to declare, the law. Had Mr. Smith O'Brien been so fortunate as to have been an Englishman, and tried under the law of England, he would have known, ten days before his trial, the name of every juror upon the panel; he would have known the names of all the witnesses who were to be examined against him, with their titles, professions, and residences. In this country it has been decided, that the like law does not prevail; and a more melancholy example of that unfortunate result never presented itself than in the case you witnessed before your eyes. A man appeared on that table to swear away directly the life of my client, with respect to

whom no human being could give me a suggestion as to who he was, what he was, where he came from, or what was his past life and conduct. Had this trial taken place in England, where I know already this practice has created much surprise, we should have been enabled to come before you—I say not what the result might have been—with evidence, if evidence of that nature did exist, to affect the character or the veracity of that witness. But, by the law of this country, an informer, or a man called by that name, may appear on the table, though he has never been even seen by the accused, or by any human being who can advise or assist him; he may deliver evidence which he will take care nobody can contradict, and destroy innocence instead of establishing guilt."

The simple law, made by wise and sagacious men, "If a man do levy war against our Lord the King in his realm, and thereof be personally attainted, he shall be adjudged guilty of Treason," was clear, distinct, and precise, and to its plain letter, apart from ingenious constructions, he should rely for an acquittal. As for compassing to kill the Queen, Mr. O'Brien did as much compass to kill her as the Great Mogul. His client's sole exclusive object during the brief outbreak was to protect his person from arrest, and this could not be tortured into levying war against the sovereign. Mr. Whiteside complained of the Attorney-General again producing a speech against the supposed traitor for uttering which he had before prosecuted him as seditious and failed to convict. "I admire the wisdom of the first law officer of the Crown in trying Mr. O'Brien now for all the offences of which his wit and talent failed before to convict him. I admire his fairness in saying to Mr. O'Brien, before I come to your treason, I will try you for that on which, before my Lord Chief Justice, I failed to convict you for sedition."

Confessing that he had once hastily considered his client an impracticable man, Mr. Whiteside gave a favourable review of the political career, speeches, and opinions of one whose ancestors had for seven generations represented the county of Clare. "Removed from the commission of the peace for advocating a repeal of the union, as well as O'Connell, on the advent of the present party to power, the one was restored,

and the name of the other left out; and I will tell you why. 'Mr. O'Connell had considerable parliamentary influence which he could give to the party who complimented, and fêted, and toasted him; but Mr. O'Brien was the same impracticable man, who would vote against Whig or Tory according as the subject to be voted on was right in his judgment.'"

On a memorial signed by twenty-two county magistrates of Limerick, this glaring injustice was remedied, and O'Brien restored, though he might not have deprecated, under all circumstances, recourse to physical force. "I do not desire," said his counsel, "the application of physical force; but my own opinion is, that it has placed the Queen on the throne, and their lordships on that bench. Every circuit I pass through that country which established the doctrine of resistance—I pass through that country where King William, backed by a loyal and bold population, prostrated a tyrant, and conquered Ireland into happiness and freedom. That doctrine, maintained by Mr. O'Brien, is perfectly right, and let no man presume to gainsay it. He would not give it up. He said the expediency of resistance, in extremity, depends on a man's own conscience as an accountable being."

After reading copious extracts from his political creed, the orator said: "These are the opinions of a patriot. I say it advisedly. I care not what ridicule may be cast on this gentleman—I know he has been ridiculed, reviled, caricatured, and slandered; I know his opinions have been misrepresented and deformed purposely before this trial; but let Mr. Attorney-General point out to me amongst the whole list of the men of his party one single individual who has spoken more worthily, more becomingly, more usefully for the country, and more honourably for himself."

The ponderous speech which, spoken in March, was to explain the Ballingarry treason of July, ought not to be, by picking out some vague passages, twisted into treason. "With deference to the Attorney-General, I say it lies on him to prove their guilty intent; he has no right to throw down speeches to me, and tell me to explain them. I have proved that this is a just argument, and moreover that it is

the law, by the highest authority; and when the Attorney-General says it is for the counsel for the prisoner to explain, I answer I will not explain. I will not explain Mr. O'Brien's political opinions to the Court or to you; and unless he makes this speech in furtherance of the treasonable purpose charged in the indictment, which treasonable purpose is, in one respect, that he compassed the death of the Queen; and, in the other, that he levied war against her—this speech is as worthless paper as ever was produced from a lawyer's bag."

There was no passage so strong as the letter of the present prosecutor, Lord John Russell, when he wrote to that political union which threatened to march 100,000 men to London. A gentleman now living was asked to take the command. The Attorney-General endeavoured to interrupt the reading of this letter, but it was admitted by way of reference to a past historical event. It was an acknowledgment by the present first minister of the Crown, of the people's right to insist, by physical combination, on having a free constitution. The whole of O'Brien's subsequent speeches "were based on the doctrine laid down by the Whigs, inculcated ever since, practised in the country for the last twenty-five years, of obtaining every thing through the medium of physical force demonstration and agitation. Surely we all know that. It is not high treason; it has become the practice, if not the law. I do not think our ancestors ever thought of that doctrine which has sprung up within the last twenty years. When I was in college, my greatest enjoyment was to pay a shilling to go into the Catholic Association and to hear Mr. Sheil speak. But this is the most innocent of the speeches I have read for the last twenty years; therefore, it has been selected by the Attorney-General for Ireland to make out a case now, after all that has passed in this country, of high treason.

"I put it to the honest heart of every gentleman who hears me, whether he will take away the life of Mr. William Smith O'Brien because he has spoken more moderately, more temperately, more discreetly, than the men who have placed my learned friend—and I admit with credit to himself—in the office that he holds?"

The fervid advocate rose into a climax of indignation as he proceeded: — "If you convict him of treason on that speech, I tell you your names will go down to remotest posterity stamped with eternal infamy." Dissociating the acts of his client from his speeches, Mr. Whiteside ingeniously divided the evidence of the witnesses into classes, and selected such parts of the proof as admitted of a favourable gloss or comment. "You may take it for granted that the Attorney-General does nothing without good reason. He accordingly proved, through General Macdonald, what property, money, and the like, my client had on his person when arrested; and with great accuracy established the very awful fact, that the man who was proceeding to subvert the British empire had 10*l.* 16*s.* 2*d.* in his purse. . . . . It is observable, that having relied on the contents of this trunk, the Crown has proved that Mr. O'Brien himself was the guilty man who informed the stipendiary of the existence of the trunk, and told him where it was, and where it might be found. Now did you ever hear of a sane man who had a trunk full of treasonable papers at a place where the Crown might not be able to find it, who wisely and considerately informs his prosecutors, 'My trunk is in such a place, send for it and you will get it?' There is no instance of that in the history of the law. Mr. O'Brien is an educated gentleman; he knows very well the consequences of high treason; he has read history; he knows very well how many lives have been taken away by the production of a letter or a piece of parchment; and he therefore showed an entire consciousness of his own innocence when he informed the stipendiary magistrate that his portmanteau was at a particular place, and he wished to have it. What is the conduct of Mr. Gore Jones? I make great allowances for the police, and I respect them very much; they are an excellent and exemplary body of men, but I do not like to see them overpraised. Mr. Gore Jones is a gentleman. He pledged his honour to Mr. O'Brien that that portmanteau should be restored to him; he pledged his honour that he would get it and forward it to him. And this righteous case begins by proving as perfect a breach of faith as could well be proved in any case of the kind.

"Suppose there were in that trunk title-deeds of a near female relative of O'Brien's; suppose there were his books of accounts; suppose there were his books of ordinary study, of poetry and devotion, did you ever know of a man setting out to commit high treason with the title-deeds of a lady whom he expected to visit put into his trunk, to enable him to carry out the crime?

"Neither of the two papers relied on has date, address, mark, or note. It is enough, God knows, for us, according to the frailties of our nature, to be responsible for every thing we do ourselves. Men are rash; public men are unthinking or unwise. They receive papers that they never think of. God help those who have a large and extensive correspondence; who receive papers and letters which they never consider, which they never answer, or, possibly, which they never see; if, when they are brought to trial, on a charge of life or death, loose evidence like this of letters addressed to them can be safely received by a jury against a prisoner. I wonder what chance of his life the late Mr. O'Connell would have had, if all the letters he received from America and elsewhere had been put into an old trunk, thrown into a huge heap, and read against him."

"To explain his expeditions or flight, we have a body of police of all ranks and degrees. We have the full constable, the sergeant, and the corporal, — all transformed into reporters, and undertaking to swear to speeches which they put into their informations seven or eight weeks after they had heard them delivered. They all give the one ruling object — an anxiety to escape arrest. I say every speech he made, from this speech at Enniscorthy, to the last speech proved by constable Carroll, expressed the same idea. If in a case of high treason, against all the law which I have read to you, against all the opinions of the wisest men that ever lived or ever wrote, the hasty, unguarded, misreported, casual speeches of any individual are to be treasured up by a jury as proofs of guilt, the judge will tell you, when he charges, they are not overt acts of treason; that is clear. Intolerable despotism is at an end."

Mr. Whiteside then noticed the ascent to the Round

Tower, the strange marchings and counter-marchings, the querulous and supplicatory speech of his client, in a tone of scarcely-concealed satire, that must have lacerated the sensitive vanity of the would-be ringleader, however well adapted to procure for him impunity and escape. "Mr. Meagher talked of his difference with O'Connell, and said that the 'best way he could make amends was, to bring the flag of liberty and plant it on his tomb.' Why, that 'flag of liberty' has waived in Ireland a long time—and a great many liberties have been taken with that flag — one man saying he will plant it in one place, and another man saying he will plant it in another place. This speaker desires to plant his flag of liberty over the tomb of Mr. O'Connell; and the Attorney-General says that is proof of high treason. What is the meaning of this boyish, declamatory, vague, puerile speaking?"

The description of O'Brien's visit to the Round Tower is sketched with humour, but less flowing and racy than it would have been, if the speaker had been more free from anxiety. "We come to Kilkenny; and, Gentlemen, certainly I approach this part of the case with considerable hesitation and alarm. The revolution strengthens apace. The wicked and ferocious conduct pursued by the arch-traitor in Kilkenny has seldom been surpassed in the annals of human wickedness. It is proved that he walked down the streets of Kilkenny quietly, to which the policeman objected, with Dr. Cane's son; and that he was left walking with two other gentlemen in the streets of Kilkenny. And then up came Edward Stephens, who gave a piece of evidence which ought never to be forgotten in the annals of the criminal law. It was ushered in with all due solemnity by the Attorney-General, with a gravity that nothing can disturb. 'Ah!' said my learned friend, 'I will satisfy your consciences of the criminal designs of the prisoner; he went out resolved to take a view, in a military fashion, of the whole surrounding country, to consider what part of it he would destroy, and what part of it he would spare. And, accordingly, while the cattle show was going on, in a spirit of remorseless wickedness that has

no parallel, he ascended the round tower in Kilkenny.' He did; he went to the very top of that round tower, came down again, watched by the little boy, who is paid by the inspector for preserving a faithful record of that awful fact for the first law officer of the Crown. Henceforward a round tower will be an object of apprehension and alarm to me through my life; and whenever I think of those memorials of the faith of an ancient people, I shall think of Mr. Attorney-General and the law of high treason. What defence is to be made for the prisoner? Ay, it may be said, in his reply, by my sagacious friend, the Solicitor-General — who has defended more prisoners than any man living — 'there is a meaning in it; it is a Guy-Faux transaction.' He went up without arms — without having spoken a word — and, which is the climax of human wickedness, he went in to see Dean Vignoles at the bottom. I remember a gentleman who defended himself in a very peculiar case, when they proved a great number of things of this ridiculous nature against him, turning round to the jury and saying, 'Gentlemen, how am I to defend myself, when my acts of innocence are brought up as proofs of guilt against me?' And he gained his cause. I never forgot it. The jury felt the force of that argument; it touched their hearts, as well as convinced their reason. Every act of this gentleman is watched; every movement is noted down and commented on; every word that drops from his lips is treasured up by the police. A casual visit to a friend in the church is brought forward by the Attorney-General for Ireland to give colour to an innocent transaction; and the climax of his wickedness is, that he went up to visit and inspect one of the round towers of Ireland, concerning which, in the Academy to which this gentleman belongs, and of which I have the honour of being a member, many very fine essays have been written. I certainly shall communicate to my friend, Mr. Petric, the danger he stands in; for as he has ascended every round tower in Ireland, he is an arch-traitor."

In commenting on the singular way that the rebel leader moved about to avoid arrest, his counsel could scarcely re-

frain evincing a sense of contempt at his feebleness and inefficiency. "What means or what money had he to effect a revolution? What artillery had he? None; but the expectation of two swivels. Was there ever a revolution made out in this way? Did ever mortal man begin to revolutionise a state in such a fashion as this; going about sometimes attended by a little boy, and sometimes dismissing his army, and going to an hotel to sleep?

"Next, Gentlemen, we come to the transaction of the visit to the police barrack. This is a transaction which the Attorney-General thought of a very serious nature. Observe what his case is. His allegation is, that the prisoner was bent upon a revolution. Men that once engage in a revolution must be bold and daring; their actions must be well conceived and sudden, if they mean to have success. It is not by politeness and civil speeches they are to succeed; there is no instance of that in the history of the world.

"O'Brien demands their arms, and the policeman replies: —'I would be unworthy the name of an Irishman if I gave up my arms.' Then Mr. O'Brien said, 'he would give him an hour to consider of his proposition, and when the hour arrived he would have five hundred men up there with him.' He tells the policeman, I will be back in one hour with five hundred men to take from you your arms. Now, if he wanted to take the arms per force, of course it is natural to expect that he should do something like it if the police remained. Why the police remained four hours longer in the town of Mullinahone. What doing? Packing up their furniture, and pursuing their ordinary avocations; and they afterwards breakfasted. And this conquering revolutionist, who was to have seized the kingdom, forgot to perform his promise and come back for the four muskets. But that is not all. He might not desire to come back to the barrack, but he might intercept them on the road. They march on the high road fifteen miles, and no human being meets, molests, or accosts them, and the hostile revolutionary party disappear. That is levying war. That is clear, actual proof, says the Attorney-General, of levying war.

The carriage and demeanour of the revolutionist are made light of. They were so frivolous, indeed, that this alone may account for his countrymen standing aloof.

"It was certainly a ferocious proceeding on Mr. O'Brien's part, for the witness says he put the head of the pike to the ground, in order to carry his manœuvre with a high hand; he trailed it on the ground, and he is not quite certain whether it was not a walking-stick, or a thicker form of stick. They do not levy war that way in France. My friend starts with horror when I mention France; but when the French workmen began to overturn the throne, it was not by carrying their pikes on the ground that they did it. It was in a very different fashion indeed. Mr. O'Brien, having got a body-guard, dismissed his army, and settled every thing to his entire satisfaction; he went to bed, and he slept. Why, Gentlemen, heroes of revolutions do not sleep; they are wakeful, watchful, projecting and planning what may be the next movement in the campaign; what city they may storm; what barrack they may assault. What is the evidence? That he went to bed, slept soundly, got up in the morning, and walked out as many gentlemen do. Did you mark the pains of Mr. Solicitor-General to discover the interesting particulars of the hotel-bill of Mr. O'Brien? Why he was a full quarter of an hour torturing his own witness, in a style of direct examination, which we do not often see exhibited in a capital case, to know who paid the bill, what was the amount of the bill, about what hour he paid the bill, and did he really pay the bill. He got his bill the next morning, and paid it; thirteen shillings and sixpence is the exact amount, which I am sure the short-hand writer has preserved as one of the most fearful facts in this appalling case.

"At Boulagh Common O'Brien made another speech, supplicating protection. The people said they had stones. It is manifest what the thing was. Did you ever hear of a body of men with stones going to demolish the monarchy of England? 'The people said they had stones. Mr. O'Brien said stones would be very good.' That is, for his purpose; but they would be very bad for the purpose to which the Attorney-General refers — a revolutionary movement. Is that

the mode in which you would proceed to overthrow the power of the Queen of England?"

The strange, vacillating, feeble conduct of O'Brien at the Mining Company's station is painted in such strange colours as to move the jury to compassion for so poor a rebel. "Did you ever hear of a man coming to you to commit a burglary — you are unarmed — he is strong; he says, give me your money; you decline — why? It belongs to the Mining Company. I admit the force of your objection — good morning? That is a very polite way of committing a crime. Do you know of any crime committed in that way except treason? He asks the loan of a pony which was going to water; the witness declared he could not give the pony because it belonged to the Mining Company, and could not give the key because he would be brought into trouble with his employers. 'That is a very reasonable and just objection; I do not ask you further, and I walk away.' There were a number of men and boys about the place coming from their work. Therefore the business of life was going on as usual. Then he states this fact, which I think is worth your recollection — 'that the business of the company did go on as usual; that he had 100*l.* in money, and gunpowder,' which I have spoken of before, 'and they were never touched.' The ammunitions of war — artillery and money, two things without which you cannot go far — are within reach of the revolutionist; he has it in his power to seize either, and he declines to touch one or both."

It was important to diminish, as much as possible, the credit of the military sub-inspector, Trant, without directly impeaching his veracity; and to detract from the importance of the attack on the house of Widow M'Cormack. This Mr. Whiteside effected in his half-quizzing, half-jocular, comments. "I have the greatest possible respect for General Trant, but I believe that the whole of his military glory, or the principal part of it, rests in his achievements on this day. I am told that he drew up a despatch which, if printed, might take its place with Gurwood's Despatches of the Duke of Wellington; and that he commenced it with a verse as follows: —

"'Who takes the foremost foeman's life,
Himself shall conquer in the strife.'

"Such was the fashion in which he drew up the despatch to his officer. Now if he and his party had marched up the hill instead of taking possession of the slated house, I really think that, in all human probability, this sudden and very painful transaction would never have arisen—the prosecution would have been without its grand overt act. But here it is that treason bursts out in all its fury and malignity. You may rely on it that this is given with full force—that he heard a crash. I asked him what that was; but he still kept repeating that word 'crash, crash, crash.' In this brief warfare the police made use of two hundred and thirty rounds of ball cartridge. We will see now what damage was done to the police. He was pressed, on cross-examination, as you may possibly recollect, during such a murderous warfare as this, on one side or other, as to where were the bullets that the people fired? There is not one found. Where are the marks? He did not observe any. Where are the stones? He got none. How many panes of glass were broken? He cannot say. All we can get from him is, that he heard a crash. What is the crash? There was a crash. The house is there still. It requires a microscope, I am told, to discover any injury done to the front of that house, and I will prove to you, that the principal panes of glass which were broken, were broken by the police themselves firing out of the house. You remember the expression Mr. Attorney-General gave utterance to in the examination of one of his witnesses as to what occurred at Ballingarry. 'Was that,' said he, 'before the *row* on the commons?' It was just exactly what describes it. 'Was it long before the row on the commons?' It was the happiest phrase to describe the transaction that could be used. None knew it more critically than the Attorney-General, and none could describe it more happily. Mr. Trant wears this day, certainly, 'his blushing honours upon him;' and long may he do so. Mr. Trant was asked whether he was hurt or wounded. He does not know; but he was told that he was. Whereabouts? I cannot say; it might have been here, or here. Did you feel much pain? I did not. But some policeman told him, Do you know what, captain, you are positively

wounded, although you never thought or heard of it. And he told that with all the gravity of a man, like Inspector Cox, stating the truth. I asked him, Did you go to bed? But this he indignantly denied, although I am not at all sure he did not take a nap. Where there was any firing it did not appear to me that the valiant inspector was in the thick of it. We endeavoured to trace him from room to room, and at last we find him ensconced in a back room up-stairs. That is the place I should like to go to; and I would rather like to have the firing from the back of the house, because I do not think a ball will come through a stone wall, even where there are five windows in front. I say it was a sudden irruption made on the police in prosecution of what I admit was an illegal object, but not a treasonable object; and if the police had behaved like men of sense, they would not have had any conflict; and when the conflict did begin, they had it all to themselves."

Mr. Whiteside expressed an earnest desire to vindicate Mr. O'Brien from words which, "as a gentleman and a man of honour, he instructs me he never uttered, and those are the words 'Slash away;'" and there can be little doubt that these words were uttered by them an at his side. Against one of the police who spoke most strongly to this command being given by O'Brien, his counsel made a forcible appeal.

"I call on the jury to reject the evidence of the man who, armed for the defence of his country, paid by a free people, in a miserable conflict of this kind, in a stone house, with an armed party beside him, says—'I would have shot down every woman within the range of my musket,' though perhaps she was there to carry away her unfortunate husband from the conflict. I call on you to disbelieve it—I appeal to the noblest and best feelings of your nature—I call on you to reject the evidence of a man who tells you, I would have imbued my hands in my fellow-creature's blood, not because he shot at me, not because he fired at me, not because he was a man engaged in a manly conflict, but a poor, feeble, miserable, defenceless woman, rushing about to rescue her husband or her child from death; yet that policeman says he would have shot her and every woman in that crowd, remorse-

lessly, relentlessly, and cruelly. I ask you not to believe him."

The effect of the fatal letter to the Mining Company, dictated by O'Brien's pride and folly, his clever apologist found it difficult to explain away. His real object, he contended, was to do a service to those men among whom he was then living, and to frighten the Mining Company by that mode of expression, to produce an impression on their minds. "It is written, as you have seen, about wages, culm, coal, contract, and lowering the price of coals to the public, which is not the manner in which men write who are engaged in a revolution. Young Emmett did not talk about the price of coals, and he was a man who intended to subvert the government. It is an endeavour on his part to oblige those who had obliged him. That is the meaning of it. By taking the first clause and the last, you might understand the word 'revolution' to mean a moral revolution. The Catholic Emancipation Act was a revolution; the Reform Bill was another revolution; the repeal of the Corn Laws was a revolution. The phrase is often used without meaning a criminal and bloody revolution; and, as all the evidence shows, Mr. O'Brien would not have blood, and would not have force, the only argument that could be rested on that letter is this —that it was an interference with property—an assumption of dealing with property which he, as an individual, had no right to assume. I admit that; but I say his true object was to prevent the company dismissing the workmen who protected him. Now that is my interpretation of that letter, which is the important document upon which the Crown relies."

With regard to the letters found in his portmanteau, Mr. Whiteside did not feel the same difficulty. "There is the greatest difference in the world between a letter written to a man, and by a man. There is not a public man breathing the breath of life, who has not received, in the course of his public career, letters of a kind which he would never condescend to answer; letters of a kind on which he never acted; letters of a nature on which he did not intend to act; letters unjustifiable and unwarrantable, but which he has no power

of preventing being delivered to him. Now, first of all, what is the date of this letter? I cannot tell you; it has no date. You see how powerfully that assists my argument, that it is very questionable, on the evidence, how it got into the portmanteau, or when it got into the portmanteau. How did it come? I cannot tell. Where is the cover? I do not know. If it was in an envelope, where is the envelope in which it came? It is not here. Did it come by post? I do not know. Was it delivered by anybody? That I cannot say either."

The important evidence of Dobbyn, Mr. Whiteside reserved for the last, declaring that he was either a spy or an informer, and wholly unconfirmed. "Who saw him at the Red Hand Club? Nobody. Who heard him there? Nobody. Who witnessed him going in or coming out? No one. How many of the constabulary do you think there were outside? They will not produce a human creature on the table to corroborate him. I had no list of witnesses. I knew not that Dobbyn was to be examined. He was like a spirit. Mr. O'Brien never heard his name. Nobody in this town could tell who he was. If he lays the scene of a certain meeting in the night, if his name and business are concealed from the men whom he prosecutes, and nobody is brought to confirm him, he might convict the whole twelve men on that jury. What is to prevent him saying, I saw all the jury there, and they stood behind Mr. O'Brien's back?

"Now, Gentlemen, the great corroboration of his story, as will be told you by the Solicitor-General, depends on the balloting papers; and if any thing were wanting to clear the case for the prisoner, it is the production of the balloting papers. Who has produced the papers? The informer's own story. How does the informer, telling you here are ten papers that I wrote my name on—how does the informer, saying he wrote his name on ten, fifteen, or twenty papers, confirm the informer? That is what I want to know. The informer might write pieces of paper every night, and then produce them. I admit there is the handwriting of other persons on them. Who has proved the handwriting of any one person to those balloting papers? 'I swear,' says the informer, 'that before we went to vote, it was agreed that no

clergyman was to be balloted for.' All the balloting papers are produced; they are put into his hands; and there appear out of the twenty-one—with which number I am alone bound to deal—eight for the Rev. Father Kenyon, and one for the Rev. Mr. O'Malley. Mr. O'Brien's name is written on one, but it is scored out; and his life is to be taken away on this evidence, for it gives a colour to the entire proceeding. Does the Government expect you to convict the Protestant agitator in the dock, while the Roman Catholic priest walks abroad at liberty in all the freshness of health and freedom, administering ghostly consolation to his flock? Is the man who had no vote, whose name was struck out, to be fixed with the responsibility of the treasonable meeting at that place, while the priest who had eight votes walks free? The Rev. Father Kenyon has been balloted for on this council of war; and I say the Rev. Father Kenyon is innocent, else I would appeal from this court to you—I would appeal to the free and magnanimous nation under whom we live, who are deeply interested in the administration of justice and the protection of the people of this country, to see that justice be done. I ask for nothing more. I appeal to your honest natures, whether one man is to be struck down and another spared!"

The closing appeal must have quickened the pulse and thrilled the hearts of all who heard him. "I have showed you that appearance in arms is not enough to constitute treason; a seeking of protection from arrest is not enough; the crime proved must be treason within the indictment, or else you are bound to acquit the prisoner.

"I have observed upon the evidence, and considered, so far as my humble ability would permit, the great question involved in this solemn trial—namely, the guilty intent of the prisoner. Even although the explanation of his conduct may be in some respect unsatisfactory, yet if it fall short of the tremendous guilt of treason, acquit him you must. Well do I know and feel the weighty difficulties of his case. With some, prejudice has blocked up the avenues to the understanding; in others, calumny has done its work. The impracticable politician has been con-

demned to a fate he has provoked and deserved. Driven to excesses he did not contemplate, in order to preserve his personal liberty, he must pay the forfeit of his life. Had he been a hypocrite who assumed patriotism as the mask of selfishness, he would ere now have received the rich reward of political baseness. Had he been willing to sell his principles, he would have been promptly paid his price. He had only to cheer on inconsistency when most flagrant, to applaud what he had condemned, and to condemn what he had applauded—to unsay what he had said, and to say what he did not honestly believe, and the attainted traitor would have been a patriotic placeman. He might have flourished in individual prosperity after he had traded with sufficient tact on the miseries of his country. But he is now hooted by all parties, for he has flattered and he has stooped to none. This offence against party is worse than his intent to kill the Queen—for he has unmasked faction and exposed meanness and corruption. Whither can he turn for sympathy? From whom expect justice? Slandered, blackened, and vilified, his motives maligned, his conduct misrepresented; nicknamed traitor, anarchist, the foe of social order, property, and law—whither can he look for refuge? A price was set upon his head; he has been caricatured, hunted through his native country—no epithet of abuse was too gross to be applied to him. Where can he expect a temperate consideration of his motives and entire political career? His hope must alone be where the law has placed it—in the honour, the integrity, the discernment, the humanity of a jury. A rampart of defence that jury was designed to be to accused men, prosecuted for political conduct or political excesses, by the weight and power of the Crown. Judges must be unbending; juries may regard the frailty of human nature. Juries—sprung from the people—should cast the ample shield of their protection around their fellow-subject, where they can believe his heart, his motive, and his purpose were not guilty, equivocal although certain of his acts may be. Such is the high office designed for you in that famous constitution, whose foundations have been laid in the deepest wisdom, which has been through successive ages cemented by

the patriot's blood, and consecrated in the martyr's fire. Your countryman, your fellow-mortal, is in your power. Seek not, with severe anxiety, for proofs on which to send him to a bloody death; rather regard the evidence which enables merciful men to save what may yet prove a useful life to his family and his country. The boast of British law is that it abhors the shedding of human blood. Yield to its benign principles, to the generous impulses of your nature, and stand between the prisoner and his grave. Review his life. From his mother's breast he drank in a love of country — from a father's patriotic example the passion grew to a dangerous height. He has indulged, perhaps, a vision, to the peril of life, that Ireland might be a nation, and you her guides to wealth and greatness. Is not death upon the scaffold a terrible punishment for the belief, although misguided, that Irishmen had intellect enough to rule the country of their birth? In his childhood he heard that the union with England was carried by corruption. He heard it from an Irish senator whom money could not purchase — whom a title could not bribe — who gave his honest vote, and would have freely given his life, to save the perishing constitution of his country. That father recounted to my client what Plunket, Bushe, and Grattan spoke on the last memorable night of our national existence, — how he had been persuaded by the gravity of their arguments, transported by their eloquence, and borne away by their patriotic ardour. His youthful imagination, fired by a sense of Ireland's wrongs, dwelt on the days when we had a gentry and a senate with intense constancy, and the passion grew that he might restore a parliament to the land he loved. This was the source of all his errors. Bitter disappointment has crushed his ardent hopes; but a parliamentary constitution he wished and meant to have given to Ireland. No man's property would he have touched — no law of God or man would he have broken. Loved by those who knew him, generous, disinterested, utterly unselfish through life, humane and tender-hearted — he now stands at the bar of his country to answer for having meant to kill the Queen, and subvert the constitution which in heart he adores. His true offence is that he courted for *you* what is

England's glory, and blessing, and pride. Deeply he may have erred in pursuit of this darling object — will you avenge his misdirected patriotism by a dreadful death? You may do so, and no earthly inducement will tempt me to say, if you pronounce the awful sentence of guilty, that you have not given the verdict conscience commanded. If his countrymen condemn my client, he will be ready to meet his fate in the faith of a Christian, and with the firmness of a man. The last accents of his lips will breathe a prayer for Ireland's happiness, Ireland's constitutional freedom. The dread moments that shall precede his mortal agonies will be consoled if, through his sufferings and his sacrifice, some system of government should arise — such as I aver has never here existed — wise, comprehensive, impartial, and, above all, consistent, which may conduct to wealth, prosperity, and greatness, the country he has loved, not wisely, perhaps, but too well.

"Would to God Mr. Smith O'Brien were my only client. The future happiness of an honourable, ancient, loyal family is here at stake — the church, the bar, the senate furnish relatives near and dear to this unhappy gentleman, who, although they differ with him in political opinion, have hastened to give to him brotherly consolation this melancholy day. Ireland has been the scene of their benevolent exertions — the source of their joys, their pride; her misery has been their affliction, her gleams of prosperity their delight. With broken hearts, should you consign the prisoner to the scaffold, they must henceforward struggle on through a cheerless existence, labouring in sorrow for the land they love. A venerable lady, who has dwelt amidst an affectionate tenantry, spending her income where it was raised, diffusing her charities and her blessings around, awaits now, with trembling heart, your verdict. If a verdict consigning her beloved son to death — that heart will quickly beat no more. Alas! more dreadful still — six innocent children will hear from your lips whether they are to be stripped of an inheritance which has descended in this family for ages — whether they are to be driven, fatherless and beggared, upon the world, by the rigour of a barbarous and cruel law —

whether they are to be restored to peace and joy, or plunged into the uttermost depths of black despair. There is another who clings to hope—hope, may it be blessed, in you! Her life's blood would be gladly shed to save the object of her youthful affections—you will not consign her to an untimely grave!—In a case of doubt, at the very worst, let a father's pity be awakened—a husband's love be moved. Let justice be administered—but justice in mercy. In no pitiful strains do I seek compassion for my client, even in this case of blood. I ask it solemnly in the spirit of our free constitution—in accordance with the rooted principles of our common law. In this great cause between the subject and the Crown, those great principles ought to shine out in glorious perfection. A verdict of acquittal in accordance with those divine doctrines, will not be a triumph over the law, but the triumph of the law. When the Sovereign seals, by her coronation oath, the great compact between the people and the Crown, she swears to execute, in all her judgments, justice in mercy. That same justice you administer—no rigorous, remorseless, sanguinary code—but justice in mercy. Where, as here, the crime consists in the intent of the heart, and you can believe that intent not treasonable, or even doubtful, then, by the solemn obligation even of coldest duty, you should yield to mercy. In nothing, though at an immeasurable distance still, do men on earth so nearly approach the attributes of the Almighty as in the administration of justice. Divine justice will be tempered with mercy, or dismal will be our fate. As you hope for mercy from the Great Judge, grant it this day. The awful issues of life and death are in your hands—do justice in mercy. The last faint murmur on your quivering lips will be for mercy, ere the immortal spirit shall wing its flight to, I trust, a better and brighter world."

As soon as silence had been restored, for no judicial restraint could check the enthusiastic plaudits of the audience, the junior counsel proceeded to call a few witnesses. The evidence for the defence consisted of the Rules and Declarations of the Irish Confederation and League, which were above suspicion; and of general testimony to the loyalty of the prisoner, attested by such respectable witnesses as the

Honorable C. O'Callaghan, Mr. Monsell, M. P., and Sir Denham Norreys.

Mr. Maher was called to tell what passed between him and O'Brien on the memorable Sunday morning, July 23rd, when he was on a visit at his house. The conversation was properly objected to, as it related to transactions at Mr. Maher's house, respecting which there had been no inquiry. Upon this refusal the prisoner became highly excited, and thus addressed the Court: "May I be allowed to ask, in common fairness, whether every speech made by me subsequent to my leaving Dublin, which happens to be reported in such a fashion that I never believe speeches were reported before, by every common policeman, should be taken as evidence of my intent; and the declaration of a private friend, of what I said to him in the progress of my journey, should not be allowed as evidence. It does seem to me the most monstrous decision I ever heard of."

Mr. Fitzgerald. Does your lordship think, having brought other members who are charged as co-conspirators into connection with Mr. O'Brien, that I am at liberty to give evidence as to the intent with which they left?

Chief Justice. No, we do not.

The Prisoner (to Mr. Fitzgerald). Perhaps you would save yourself the trouble of going any further; it is quite a farce to attempt it. I call upon you to give up the defence. Let the case go as it is to the jury; I am quite satisfied; I look upon it as a substantial violation of all the principles of justice, and I call on my counsel to give up the case.

The Solicitor-General withdrew his legal objection, as it appeared to press so keenly on Mr. O'Brien's mind; and Mr. Maher then related the dialogue.

"About eight o'clock a servant came to my dressing-room, and stated that Mr. Smith O'Brien wished to speak to me. I went to his bed-room, and found him in the act of dressing; he immediately said, 'There are two other gentlemen in the house for whom I think you are not prepared: Mr. Meagher and Mr. Dillon arrived this morning by the mail, and bring the news of the suspension of the Habeas Corpus Act——'

Chief Justice. Meagher and Dillon?—Meagher and Dillon.

"'And that a warrant for my arrest has been issued, which they think may probably have come down by the mail by which they came themselves;' and he then said, 'My dear Maher, I did not come to your house to disturb its peace; get some breakfast, and send us on our way. I do not wish that any arrest should take place in your house. Send for a car, that we may go towards Kilkenny, where we have some friends with whom I wish to consult in this crisis.'"

O'Brien and his friends then left in Mr. Maher's carriage, apparently irresolute, and undecided what course to take.

After reading some loyal speeches of their client, his counsel wound up their case with calling General Sir William Napier, on his *subpœnâ duces tecum*, to reveal an extraordinary note from the Home Office, connected with some extraordinary transactions attending the Reform agitation in 1831. Having stated in that direct and straightforward manner which is so peculiar to military witnesses, that he had refused to belong to the London Political Union — that he had seen Mr. Parkes for about two minutes — and that he had received a note from Lord Melbourne's private secretary, which he produced, the historian of the Peninsular war was asked to state the propositions made to him. The Court, as a matter of course, refused to admit the evidence, and public curiosity was for some time, and only for a time, disappointed.

Mr. Fitzgerald summed up the evidence with great energy and feeling. "It is now my duty to address you last on behalf of the prisoner, of whose life it has pleased God to make you, in this case, the arbiters. Therefore, although I feel most sensibly the deep responsibility of my own position, I shall not presume to trouble you with one word personal to myself. Your own far deeper responsibility must, I am persuaded — I am sure it ought — too entirely to engross your minds, to permit you to waste one thought upon me. Awful, indeed, as is the responsibility of every individual concerned in this solemn proceeding — from my lords upon the bench down to myself, the meanest and most incompetent actor in it — what is the responsibility of all the rest compared with yours?

"Gentlemen, it is not merely that one word of yours may

consign to an untimely and an unhonoured grave a man in the prime of manhood, and of birth and station to rank with the foremost amongst your countrymen; it is not merely that one word of yours may make a wife a widow, and children orphans; it is not merely that on one word of yours may depend the liberties of your countrymen, and the preservation of that law which is their only safeguard — that law which lives, and moves, and has its being in the spirit of an intelligent, impartial, and fearless jury, and not in the worthless parchment on which it is written — it is not merely this, though God knows there is in each and every one of these matters involved an amount of responsibility at which the stoutest-hearted amongst you must shudder; but there is a responsibility, not less momentous, though far less obvious, arising from the nature of this case, and the circumstances under which you sit there to try it. This case, from its nature, demands a severe exercise of your judgment on a question of intent, perplexed by legal distinctions."

Mr. Fitzgerald expressed a natural fear that the fancies of the jury might have been excited by the "pomp and circumstance" of war on the part of the Crown. "But had there been no levying of war in this realm for months antecedent to any act proved by the Attorney-General? Is it not the fact that your fields were covered with encampments — that your towns were filled with troops — that your slumber was broken by the rattling of artillery through your streets? Do you, or do you not, in your own fancies and imaginations, connect the intent, for which these mighty preparations appeared to prepare, and which they seemed to be anticipating, with the intent which is imputed to my client? Would that be common justice? And yet is there one of you whose fancy or whose feelings is wholly uninfluenced by the anticipations involved in these mighty preparations?"

The acts of the prisoner did not breathe of war, but of anxiety for the personal protection of himself and the friends that were with him. "This hard journeying from place to place; the putting up of barricades when troops and policemen appeared, and removing them the moment they passed; the unfortunate and accidental conflict at Ballingarry —

taking those facts alone, without the declarations, without the letter to the Mining Company, is there one of you who could have a doubt, when forming your judgment on the facts themselves, that the thing intended was not a general rebellion, but a preservation of these parties from personal arrest? Look at the acts themselves — bodies levied, melting away almost instantly — not one fact proved, though dogged by policemen through all his travels, of a design against any particular place or person — no marching here to attack, no marching there to defend — no object stated; but, on the contrary, a mere following of the person of Mr. O'Brien — at one time altering the numbers who attend — when lodged in an inn two men guarding, and all the rest dismissed. That their business should be to attend the person of Mr. O'Brien; that this barricade should be erected for protecting him when military or police appeared in sight, and then removed so as not to interrupt public business — all these are quite consistent with our case, and utterly inconsistent with that of the Attorney-General."

The Solicitor-General replied with much point to the various topics for the defence, and when remarking on Duffy's letter, "I wish Mr. O'Brien had not listened to this diabolical tempter, who was pressing him to his destruction," was interrupted by O'Brien. "It is not fair to speak of Mr. Duffy in this manner in his absence,—he is not present."

The Solicitor-General. I do believe Mr. O'Brien was unwilling to take this step. His honour, his position, his feelings, his education, were against it, but he was urged on by bad advisers. I regret——

The Prisoner. I must say that it is wrong, at the time that gentleman himself is awaiting his trial, to take this opportunity of prejudicing the public mind against him. I beg most distinctly to repudiate any such observation of the Solicitor-General.

Good feeling and propriety justified this interruption.

The Solicitor-General resumed, and asked with much pertinency, "If escape or prevention of arrest was Mr. O'Brien's object, why did they not proceed to Wexford or Waterford, thence to England, and so to France? Suppose you were

apprehensive of being arrested on a criminal charge by the authorities of the Crown and Government; that your friends came down post haste to communicate to you the peril of your position; that you are within two or three hours' journey of one of the most convenient outlets from Ireland, the port of Waterford, from whence packets are sailing every five or six hours, establishing a communication between the two kingdoms; would you not naturally say, I will take myself to England, and if I have no protection in England, I will take myself to France? Instead of pursuing that natural course, Mr. O'Brien and his friends stop in Callan to harangue the people. I ask you, can you, or any human being explain, why these gentlemen, who professed to have in view the mere personal security of one of them from arrest under a warrant, should go about the country for the time they did? Was not the plain course for them to take to go to Waterford, or Cork, or to leave the country until they could return unmolested by any proceedings on the part of the Government. But you are called on, as men of sense, to reconcile the extravagant proposition to your own understandings, that this gentleman himself, and the two other gentlemen, resorted to the town of Mullinahone, caused that public insurrection of armed men there, and that these men were assembled in that manner, merely to do that which in itself must be utterly absurd and ineffectual, unless followed up by a general insurrection and rising throughout the country. I am quite satisfied, and give him full credit for it, that he would not unnecessarily spill one drop of blood to effect his object of a revolution in the country, if it could be done by any other means. If the constabulary had all deserted their duty, and if the military had mutinied, and gone over to the people; if either one or the other had fraternised with the leaders of this intended revolution, whether at Callan, Carrick, Clonmel or elsewhere, is there any one here who can doubt for a moment, that Mr. O'Brien would have been highly gratified if he could effect his object of levying war against the majesty of the Crown, without even the ordinary result, of the loss of a single human life? But that does not change the character of his offence."

After enlarging on the insurrectionary character of the movement, the Solicitor-General explained how it came to pass that the spark was so suddenly trodden out and extinguished. "The police approach, and a renewed conflict takes place between the Government officers and the armed peasantry, which ended in the way you have heard stated. You may be sure the result of those conflicts opened the eyes of the people, and most likely opened the eyes of the gentlemen and Mr. O'Brien too. They saw it was altogether a hopeless and desperate enterprise, because they were for four days surrounded by multitudes of armed insurgents, and yet no communication arrived of a single outbreak in any other part of the land."

Chief Justice Blackburne put the result of the evidence to the jury with much force and clearness. "Was the object of this insurrectionary movement a general object, or was it a limited, particular, personal object to protect the person of Mr. O'Brien? Now, you will observe that I have stated to you the proposition that the personal or particular object must be exclusive; because if in addition to protecting the person from arrest there was the other and general purpose, which the Crown contend for, the existence of the particular object is of no importance whatever, for the moment the general object is established that instantly becomes high treason.

"Gentlemen, the question, no doubt, is one of intention. Did Mr. O'Brien, and those who assisted him—did he intend simply to effect his own personal security from arrest—or did he intend, by this force and by these movements, an object of a general character—whether a change in the government, or a repeal of the Act of Union, or the separation of Ireland from Great Britain? The acts which are stated in the indictment, you will find as follow:—The parading and marching in a hostile manner through divers villages, towns, and other public highways; the erection of obstructions of cars, carts, pieces of timber, and other materials, erected and built across the highways, to obstruct and prevent the marching of the soldiers of the Queen; the making a warlike attack upon and firing on a large body of

constables, being in the execution of their duty, and endeavouring with force and violence to compel the constables to join them in levying and raising public insurrection and rebellion against our Lady the Queen; the making a warlike attack upon a certain dwelling-house, in the county of Tipperary, and firing on a body of constables therein assembled. These are the overt acts. These, or one of them, must be proved by two witnesses; but as to the object — which object depends on intention — that is left to be disclosed by evidence, of the value and weight of which you are the exclusive judges."

The Chief Justice was interrupted in his recapitulation by a singular, almost unprecedented, incident. After a private communication between counsel, the Judges, with the counsel for the Crown and for the prisoner, retired to their private room; and, a quarter of an hour having elapsed, on their return to Court permitted the witness Dobbyn to be recalled. The Attorney-General was required to give his assent, the application being so unusual. He denied, point blank, that he had ever been in a victualling house in Great George's Street, — had discussed politics there with two others, and a person named Dalton, — had proclaimed himself for a republic, and a disciple of John Mitchel, — had winked at Dalton, and pronounced the other two men papists, — or that he had ever accompanied him to another tavern, and talked of Titus Oates.

Mr. Whiteside. Did you say it was lawful for a papist to perjure himself against a Protestant, and receive absolution; and, therefore, you would not consider yourself sinful in perjuring yourself against them; that one man would not be believed on the trial unless backed by another, but that Dalton would be a proper person, as Government was looking out for such? — Nothing of the kind, on my oath, ever occurred.

Did he say, in reply, he would not be guilty of such villany for the Lord-Lieutenancy, or the Lord-Lieutenant's income? — Nothing of the sort.

Did you answer, a man in distress will do any thing to get money? — Never.

Did he call you a rascal? — No.

Did he tell you to quit his company? — No.

Did you say you were only trying him, and that you were surprised that a man of his education should not know that you were only humbugging him? — Nothing of the sort.

Did you add, in another tone, that the landlords of Ireland were tyrants and villains, and that if every man was like you there would soon be an end to the British yoke in Ireland? — Never.

Nothing of that kind occurred in substance? — Never, from beginning to end.

[*The witness was directed to remain on the table.*]

Henry Dalton then swore to these facts; and Dobbyn made extraordinary grimaces, indicating astonishment and incredulity, during his strange narrative. Mr. Whiteside, perceiving the bye-play, said quietly, but emphatically, — "Mr. Dobbyn, you need not make those faces which have just been spoken of by the witness: take my advice, and do not."

It was not undeserving notice that Dalton thrice called for water when pursuing his narrative, — first saying he had been travelling all night; next, that he was subject to nervous palpitation of the heart; and again, when closely plied with questions, calling for another draught. On cross-examination by the Attorney-General, he described the sort of life he had led, popularly described as *harum-scarum;* that he had been expelled Trinity College for not paying his dues; and had kept a night school at Liverpool. He was then asked, —

"How do you support yourself at present? — By pupils.

Do they come to you? — No, they are rather too humble for that; I go to them. I think there is no discredit on me: I just hold as high an opinion of myself as my examiner.

And a great deal higher, I am sure! — Not higher."

His cross-examination was closed with the *naïve* question to Dobbyn, — "Do you know this gentleman? — On my oath I never saw him!"

After this highly dramatic and startling episode, the Chief Justice resumed his summing up, first making these just

remarks upon what had occurred: — "Which of these witnesses speaks the truth, it is for you, and you exclusively, to decide. If you think Dalton tells the truth, I would advise you not to pay the slightest regard to the evidence that was given by Dobbyn; to deal with the case as if you never heard a word from his lips. But, beyond that, the rejection of his evidence ought not to operate with you. For you will still, as I before told you, remember that Dobbyn has been impeached. I submitted to you fully the grounds on which the Crown contended that his testimony was sustainable; and I told you, even upon those grounds, if you thought that you could not safely trust to his evidence, or that you had a reasonable doubt of his accuracy or truth, that you ought to deal with the case as I have told you now you should deal with it, if you give credit to the statement of Dalton. If, on the other hand, you believe Dobbyn to have been now telling the truth on the subject, upon which he is contradicted by Dalton, I would still advise you not to allow the result of that contradiction to influence your judgments upon the question, whether, if you had never heard Dalton, he is entitled to credit. Deal with that question precisely as if Dalton had not been examined, and try that independently of any contradiction."

As Dalton was never again brought on the scene, and as, in the subsequent trials, after time had been given for any inquiries, Dobbyn was never contradicted, though he had given several names and dates and particulars, it may be fairly presumed that what he said was in the main correct and true.

With regard to the nature of the attack on the house of Widow M'Cormack, the charge of the Chief Justice was distinct and emphatic: — "I repeat again the observation I made before, that if you believe that that tumultuous force, armed in the way described, seeing the police, attempted to obstruct and pursued them to this house, and there assailed them, it does not signify, with regard to the present case; it signifies nothing whether the police were wounded, whether the shots entered the house, how many shots were fired, or what the particulars or details of the transaction were. It is

make out a new writ for the electing of a knight of the shire to serve in Parliament for the county of Limerick.

Upon a communication being conveyed to the State prisoner that his life should be spared, on condition of his being transported beyond the seas for life, so far from accepting the boon with gratitude, Mr. O'Brien peevishly objected that the Crown had no right thus to exercise the prerogative of mercy in Ireland. It was contended that the power did not extend to that country in cases of high treason, as the act which gives the prerogative of commuting the sentence of death to transportation, 6 Geo. III. c. 12., speaks only of capital felonies. Now high treason was felony, and something more, and they were not convertible terms. To remove all shadow of doubt, a declaratory law was passed, 12 & 13 Vic. c. 27., entitled "An Act to remove Doubts concerning the Transportation of Offenders under Judgment of Death to whom Mercy may be extended in Ireland." "The infatuated conduct of O'Brien," said Lord Brougham, "was in perfect keeping with his past conduct:—

'Servatur ad imum
Qualis ab incepto processerit, et sibi constat.'

He thought, when he rejected Her Majesty's offer of mercy, that he must make a last flourish in a country where agitation had so long flourished, and knew that he would not be taken at his word!"

The prisoners are now undergoing their punishment of transportation.

NOTES TO O'BRIEN'S TRIAL.

Note 1.

The concluding passages of Mr. Whiteside's defence of Meagher, when tried for his participation in O'Brien's treason, appear very eloquent:—

"Every speech noted down, every step tracked; what would become of the country if this system were pursued? Down to his arrival at Carrick, nothing was brought against him but speeches, speeches, speeches! How were they reported? By ignorant policemen! Other

men had been convicted for their acts. Here they had nothing but speeches. Where did Mr. Meagher arm? Nowhere. Where did he fight? Nowhere. Where did he levy war? Nowhere. Whom did he attack? No one. But the Attorney-General told them he was guilty. Reject his casuistry and acquit. Posterity will remember and bless your names; it will be said of you, that when impanelled in a time of unparalleled excitement, you did your duty between the Crown and the subject, and executed justice temperately, wisely, humanely, reconciling many to the law who had doubts of its impartiality and fairness; that you would not listen to sophistry, nor convict your fellow-creature on conjecture and guess; that you struck down the odious doctrine of constructive treason, and restored the law to the noble simplicity in which it was fashioned by a free and virtuous ancestry. May that law, not a law of subtleties and quirks, quibbles and constructions, but a law of broad reason, be perpetual, as the greatness of the people from whom it springs, and may the free and happy constitution, defended and guarded by that law, flourish in unbroken strength and splendour until that dread day on which we are taught to believe this fabric of nature must be dissolved in eternal ashes!"

NOTE 2.

The pathetic appeal of Meagher, a fellow traitor with O'Brien, when called upon to say why judgment of death should not be pronounced against him, enhances our regret that such noble abilities should have been so wasted:—

"Even here, where the thief, the libertine, and the murderer, have left their foot-prints in the dust,—here, on this spot, where the shadows of death surround me, and from which I see my early grave in an unconsecrated soil is opened to receive me,—even here, encircled by those terrors, the hope which beckoned me on to embark upon the perilous sea, upon which I have been wrecked, still consoles, animates, enraptures me! Judged by the law of England, I know that this crime entails upon me the penalty of death; but the history of Ireland explains this crime, and justifies it. Judged by that history, I am no criminal; you (turning and addressing Mr. M'Manus) are no criminal; you (turning again to Mr. O'Donoghue) are no criminal; and we deserve no punishment. Judged by that history, the treason of which I stand convicted, loses all guilt, has been sanctified as a duty, and will be ennobled as a sacrifice.

END OF THE FIRST VOLUME.

from its nature a transaction of that kind which can scarcely ever be described by two witnesses exactly in the same terms. In the confusion and hurry, and all the attending circumstances of such a matter, it is impossible that men can accurately observe or accurately recollect afterwards all the particulars. But the main question is this, do you believe that there was that armed assembly there that day? Do you believe that they were armed for the purpose of obstructing the march of that body of police? If they were not, why did they pursue them into the house? If they were not, why did they assault or fire at them? If you believe these facts, it is quite plain that the overt acts, this being one of them, are distinctly proved, and proved over and over again by a variety of witnesses."

The jury, after partaking of some refreshment in court, retired to consider their verdict. At the end of two hours, they returned with a general verdict of Guilty, and a written recommendation of the prisoner to the merciful consideration of the Government, being unanimously of opinion that, for many reasons, his life should be spared.

After Mr. Whiteside had formally renewed his motion and arguments in arrest of judgment, which were as formally overruled, the prisoner, upon being asked by the Court what he had to say why sentence of death should not be passed upon him according to law, thus addressed the Court in a bitter tone of self-satisfaction and hauteur:—

"My lords, it is not my intention to enter into any vindication of my conduct, however much I might have desired to avail myself of this opportunity of doing so. I am perfectly satisfied with the consciousness that I have performed my duty to my country; that I have done only that which, in my opinion, it was the duty of every Irishman to have done; and I am prepared now to abide the consequences of having done my duty to my native land. Proceed with your sentence!

Chief Justice. William Smith O'Brien, after a long, patient, and laborious trial, a jury of your country has found you guilty of high treason. Their verdict was accompanied by a recommendation to the mercy of the Crown.

That recommendation, as is our duty, we shall send forward to the Lord Lieutenant, to whom, as you must know, exclusively belongs the power to comply with it. It now remains for us to perform the last solemn act of duty which devolves upon us, — to pronounce that sentence by which the law marks the enormity of your guilt, and aims at the prevention of similar crimes by the example and the infliction of a terrible punishment. Oh! that you would reflect upon that crime and dwell upon it with sincere repentance and remorse. Oh! that you would regard it as it is regarded by every rational being — that you would feel and know that it is really and substantially as repugnant to the interests of humanity, the prospects and spirit of the divine religion which you profess, as it is to the positive law of revelation, and which is now attended by the forfeiture of your life. The few words that you have addressed to the Court forbid me — I say it with pain and distress — from proceeding any further with this subject; it now only remains for the Court to pronounce the sentence of the law."

Petitions signed by several hundred thousands of their fellow-countrymen were presented to the Lord Lieutenant, that he would recommend the life of O'Brien and the other attainted traitors to be spared. As they had not been swayed by selfish, sordid, personal motives, as they had respected property, and been deluded by mocking echoes, which they had fancied to be the voice of the people, many of those, who were most attached to the preservation of the Union intact, agreed in the prayer, and added their signatures. Meantime a Writ of Error was sued out, and in May, 1849, four counsel argued most ingeniously, but in vain, against the validity of the proceedings. So unimpeachable and secure from cavil had they been, that judgment was pronounced by the House of Lords in favour of the Crown, without hearing its counsel. A copy of the Judgment being forwarded to the House of Commons, it was ordered on the 18th May, on the motion of Lord John Russell, that as Mr. Smith O'Brien, a member, had been adjudged guilty of high treason, Mr. Speaker do issue his warrant to the Clerk of the Crown in Ireland to

LONDON :
SPOTTISWOODES and SHAW,
New-street-Square.

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